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Maine Department of Environmental Protection

Last updated: May 17, 2000

### **38 § 361-A. Definitions**

Unless the context otherwise indicates, the following words when used in any statute administered by the Department of Environmental Protection shall have the following meanings:

**1. Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

**1-A. Coastal streams.**

**1-B. Agricultural activities.** "Agricultural activities" means the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm woodlot products, including Christmas trees.

**1-B. Aquifer.**

**1-C. Aquifer recharge area.** "Aquifer recharge area" means land composed of permeable porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmit it to aquifers.

**1-D. Aquifer.** "Aquifer" means a geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as identified by the Natural Resources Information and Mapping Center.

**1-E. Commissioner.** "Commissioner" means the Commissioner of Environmental Protection.

**1-F. Affordable housing.** "Affordable housing" means dwellings, apartments or other living accommodations for households making at or below 80% of the median household income as determined by the Department of Economic and Community Development.

**1-G. Board.** "Board" means the Board of Environmental Protection.

**1-H. Department.** "Department" means the Department of Environmental Protection composed of the board and the commissioner.

**1-I. Clean Water Act.** "Clean Water Act" means the Federal Water Pollution Control Act, as defined in subsection 1-K.

**1-J. Code of Federal Regulations.** "Code of Federal Regulations" means the codification of regulations published in the Federal Register by the Federal Government, and includes those regulations effective on or before January 1, 1997.

**1-K. Federal Water Pollution Control Act.** "Federal Water Pollution Control Act" means federal Public Law 92-500 or 33 United States Code, Sections 1251 et seq., including all amendments effective on or before January 1, 1997.

**2. Fresh surface waters.** "Fresh surface waters" means all waters of the State other than estuarine and marine waters and ground water.

**2-A. Ground water.** "Ground water" means all the waters found beneath the surface of the earth which are contained within or under this State or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

**2-B. Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

**3. Municipality.** "Municipality" means a city, town, plantation or unorganized township.

**3-A. Nonferrous metal mining.** "Nonferrous metal mining" means hard rock mining for base and precious metals including copper, lead, tin, zinc, gold, silver, platinum, paladium and unspecified platinoid metals. "Nonferrous metal mining" does not include thorium or uranium.

**3-B. Pollution prevention.** "Pollution prevention" means the application of the toxics use reduction principles and reduction hierarchies, which are established in chapter 26, to manufacturing, commercial and consumer chemical use and energy production and consumption.

**4. Person.** "Person" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

**4-A. Pollutant.** "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

**4-A-1. Snow dump.** "Snow dump" means a facility that is used for the storage of snow and incidental materials collected from public or private ways.

**4-A-2. Road salt and sand-salt storage area.** "Road salt and sand-salt storage area" means a facility that is used for the storage and handling of highway deicing materials.

**4-B. Surface waste water disposal system.** "Surface waste water disposal system" shall mean any system for disposal of waste waters on the surface of the earth, including, but not limited to, holding ponds, surface application and injection systems.

**5. Estuarine and marine waters.** "Estuarine and marine waters" means those portions of the Atlantic Ocean within the jurisdiction of the State, and all other waters of the State subject to the rise and fall of the tide except those waters listed and classified in sections 467 and 468.

**6. Transfer of ownership.** "Transfer of ownership" means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the department.

## **7. Coastal streams.**

**7. Waters of the State.** "Waters of the State" means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

**38 § 363-D. Waiver or modification of protection and improvement laws**

The commissioner or the commissioner's designee may waive or modify any of the provisions of this chapter if that waiver or modification promotes or assists any oil spill response activity conducted in accordance with the national contingency plan, a federal contingency plan, the state marine oil spill contingency plan, or as otherwise directed by the federal on-scene coordinator, the commissioner or commissioner's designee. A waiver issued by the commissioner under this section must be in writing.

### **38 § 410-H. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

**1. Best management practice guidelines.** "Best management practice guidelines" means recommended techniques or procedures or a combination of techniques or procedures that are determined by the appropriate agency identified in section 410-J to be the most effective practicable means of preventing or reducing pollution generated by nonpoint sources.

**2. Nonpoint source.** "Nonpoint source" means any source, excluding any source defined as a direct discharge in section 466, that discharges pollutants into the surface or ground waters of the State, including, but not limited to, sources related to agriculture, construction and maintenance of bridges, railways and roads, forest management and commercial, industrial or residential development.

### **38 § 410-J. Program implementation**

**1. Agriculture.** The Department of Agriculture, Food and Rural Resources shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from agricultural activities. The Department of Agriculture, Food and Rural Resources may recommend to farmers the use of best management practice guidelines.

**2. Forestry.** The Department of Conservation, Bureau of Forestry in cooperation with the commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from wood harvesting and forest management activities. The Bureau of Forestry may publish best management practice guidelines for use by landowners and wood harvesters. Landowners and wood harvesters must be notified of these guidelines and assisted in their efforts to implement the guidelines in accordance with the Bureau of Forestry advisory programs under Title 12, sections 8611 and 8612.

**3. Transportation.** The Department of Transportation in cooperation with the commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from transportation-related activities. The Department of Transportation shall encourage all state or federally funded projects to use the best management practice guidelines. The Department of Transportation may provide technical assistance to municipalities.

**4. Development.** The commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from development-related activities. State agencies shall follow these guidelines in construction or remodeling activities for state buildings and other capital improvements. The commissioner shall provide guidance and technical assistance to the Office of Community Development and municipalities to support implementation through growth management programs authorized by the growth management laws, Title 30-A, chapter 187, subchapter II and municipal subdivision ordinances.

**38 § 413. Waste discharge licenses**

**1. License required.** No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department.

**1-A. License required for surface wastewater disposal systems.** No person may install, operate or maintain a surface wastewater disposal system without first obtaining a license therefor from the department.

**1-B. License required for subsurface wastewater disposal systems.** No person may install, operate or maintain a subsurface wastewater disposal system without first obtaining a license therefor from the department, except that a license is not required for systems designed and installed in conformance with the plumbing code, as promulgated by the Department of Human Services under Title 22, section 42.

**2. Exemptions.** A person is not considered in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to agricultural activities, subject to the following conditions.

A. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates.

B. The commissioner has certified that the plan meets the objectives of this chapter.

C. The commissioner determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan.

D. After the State receives authority to grant permits under the Federal Water Pollution Control Act, this exemption will not apply to any discharges considered point sources under federal law, including discharges from concentrated animal feeding operations and discharges from silvicultural point sources, as defined by federal law.

**2-A. Exemptions; pesticide permits.**

**2-A. Exemptions**

**2-A. Exemptions; pesticide permits.**

**2-B. Exemptions; snow dumps.** The department may by rule license categories of snow dumps when the activity would not have a significant adverse effect on the quality or classifications of the waters of the State, except there may be no snow dumps directly into the fresh surface waters of the State.

**2-C. Dredge spoils.** Holders of a permit obtained pursuant to the United States Clean Water Act, Public Law 92-500, Section 404, are exempt from the need to obtain a waste discharge license for disposal of dredged material into waters of the State when the dredged material is disposed of in an approved United States Army Corps of Engineers disposal site. Disposal of all dredged materials is governed by the natural resource protection laws, sections 480-A to 480-S.

**2-D. Exemptions; road salt or sand-salt storage piles.** The commissioner may exempt any road salt or sand-salt storage area from the need to obtain a license under this section for discharges to groundwaters of the State when the commissioner finds that the exempt activity will not have a significant adverse effect on the quality or classifications of the groundwaters of the State. In making this finding, the commissioner's review must

include, but is not limited to, the location, structure and operation of the storage area.

Owners of salt storage areas shall register the location of storage areas with the department on or before January 1, 1986. As required by section 411, the department shall prioritize municipal or quasi-municipal sand-salt storage areas prior to November 1, 1986.

#### **2-E. Exemptions; pesticide permits**

**2-F. Exemption; aquaculture.** Until the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, a person may not be considered in violation of this section if:

A. The discharge activity is associated with off-shore marine aquaculture operations in the estuarine and marine waters; and

B. As a condition of obtaining a leasehold from the Department of Marine Resources, the Department of Environmental Protection certifies that the aquaculture activities mentioned in this subsection will not have a significant adverse effect on water quality or violate the standards ascribed to the receiving waters' classifications

**2-G. Exemptions; oil and hazardous substances spill response.** A license is not required under this section for the following discharges:

A. A discharge to groundwaters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if discharge complies with the instructions of the commissioner or the commissioner's designee; or

B. A discharge to surface waters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if the discharge complies with the instructions of an on-scene coordinator pursuant to 40 Code of Federal Regulations, Part 300

**3. Transfer of ownership.** In the event that any person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer are jointly and severally liable for any violation thereof until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

#### **4. Conditions for licensing.**

#### **5. Registration of discharges exempted from licensing.**

**6. Unlicensed discharge.** If after investigation the commissioner finds any unlicensed discharge, the commissioner may notify the Attorney General of the violation without recourse to the hearing procedures of section 347-A. The Attorney General shall proceed immediately under section 348.

**7. Tidal waters and subtidal lands.** In connection with a license under sections 414 and 414-A, whenever issued, the department may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of that license in, on, above or under tidal waters or subtidal lands of the State. This permit may be issued upon such terms and conditions as the department determines necessary to insure that the facilities create minimal interference with existing uses, including a requirement that the licensee provide satisfactory evidence of financial capacity, or in lieu thereof, a bond in such form and



amount as the department may find necessary, to insure removal of such facilities. In the event that the facilities are no longer necessary in order for the licensee or successor thereof to comply with the terms of its license, the department may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of the facilities from the tidal waters or subtidal lands. This removal may be ordered if the department determines that maintenance of the facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of this removal will not create an undue economic burden on the licensee or successor.

**8. Treated wastewater.**

**9. Emergency public water utility license**

**10. Marine aquaculture projects.** After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, the department may issue to an owner of a marine aquaculture project a license for the discharge of pollutants to those waters only if the following conditions are satisfied:

- A. An application for a leasehold has been accepted as complete by the Department of Marine Resources and a copy of an approved leasehold is provided to the department prior to any discharge of pollutants;
- B. The project will not have a significant adverse effect on water quality or violate the standards of the receiving water's classification;
- C. The project will be managed and monitored in accordance with a program approved by the Department of Marine Resources;
- D. The project is not located in waters classified as SA under section 465-B, subsection 1;
- E. Other applicable requirements of this chapter are met

A license issued pursuant to this subsection is void if water quality is significantly affected by the project.

For the purposes of this subsection, an aquaculture project is a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable plants or animals in estuarine or marine waters.

### **38 § 414-A. Conditions of licenses**

**1. Generally.** The department shall issue a license for the discharge of any pollutants only if it finds that:

- A. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;
- B. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter;
- C. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the department finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with section 464, subsection 4, paragraph F. The finding must be made following procedures established by rule of the board pursuant to section 464, subsection 4, paragraph F;
- D. The discharge will be subject to effluent limitations that require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents that are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations. If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgment, after consultation with the applicant and other interested parties of record. In determining best practicable treatment for each category or class, the department shall consider the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives; and
- E. A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard is only applicable to applications to discharge pesticides.

**1-A. License for copper sulfate applications in public water supplies.** The commissioner may issue licenses to treat public water supplies with copper sulfate or related compounds. The commissioner may not issue more than 2 consecutive licenses for the same body of water.

A. A license may only be issued if the Department of Human Services, Division of Health Engineering has determined that:

- (1) An abundant growth of algae producing taste or odor exists to such a degree that the water supply is in danger of becoming unhealthful or unpalatable;
- (2) The abundance of algae is a sporadic event. For purposes of this section, "sporadic" means occurring not more than 2 years in a row; and

(3) The algae cannot effectively be controlled by other methods

B. Any license issued under this subsection is for one application or series of applications not to exceed 6 months, as provided in the terms of the license.

C. The commissioner shall impose all conditions necessary to meet the requirements of this section and all other relevant provisions of law

D.

**1-B. Relicensing of overboard discharges.** The following provisions shall govern the relicensing of overboard discharges.

A. The department shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of relicensing, when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Human Services pursuant to Title 22, section 42, that will not result in an overboard discharge.

B. For the purposes of this subsection, the department may not require the installation or use of wastewater holding tanks as a "technologically proven alternative method of wastewater disposal" except in the following cases:

(1) Seasonal residential overboard discharges that are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service;

(2) All overboard discharges located within the boundaries of a sanitary or sewer district when the district has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district; and

(3) All overboard discharges located within the municipality when the municipality has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the municipality's services who are physically connected to the sewers of the municipality.

C. The department shall issue a conditional permit to any applicant denied a license for an overboard discharge under this subsection. The term of the permit extends until 6 months after the commissioner offers a grant to the applicant for the costs of replacing the overboard discharge under the provisions of section 411-A.

D. Until the State receives authority to issue permits under the Federal Water Pollution Control Act, the department shall limit to a maximum of 10 years the term of any overboard discharge license or conditional permit, including relicensings, issued after June 1, 1987. For the purposes of this section, "overboard discharge" is defined in accordance with section 466, subsection 9-A. All licenses in existence on June 1, 1987, with expiration dates occurring in 1989 or 1990, expire on the date stated in the license. All other licenses in existence on June 1, 1987 expire on the same day and month stated in the existing license but in a new year, determined by the following schedule:

| Current Expiration Date | New Date |
|-------------------------|----------|
|-------------------------|----------|

|            |      |
|------------|------|
| 1991, 1992 | 1990 |
|------------|------|

|            |      |
|------------|------|
| 1993, 1994 | 1991 |
|------------|------|

1995, 1996

1992

1997, 1998

1993

After the State receives authority to issue permits under the Federal Water Pollution Control Act, the term of any overboard discharge license or conditional permit may not be more than 5 years.

E. At the time of each relicensing of an overboard discharge, the department shall impose all conditions necessary to meet the requirements of this section and all other relevant laws.

**1-C. License for the use of algicides in Class GPA waters.** The commissioner may issue a license to a municipality for the discharge of copper compounds or other materials registered by the Department of Agriculture, Food and Rural Resources to control excessive algae growth in Class GPA waters when the commissioner has determined that:

A. A lake restoration plan to reduce algae growth has been designed and implemented in cooperation with the department;

B. That plan has been found by the department to have failed to achieve the desired level of restoration in a reasonable period of time;

C. Because of technical or financial limitations, there is no further plan for restoration;

D. The affected water has a recent history of severe algae blooms of less than one meter Secchi disk transparency;

E. A watershed plan to further reduce phosphorus loading to the affected water is being implemented by responsible parties including the department and all affected municipalities; and

F. The Department of Inland Fisheries and Wildlife has found that the discharge will not have an adverse impact on the fishery management plan of that water body.

This license allows for no more than one application of copper compounds or other registered algicides per year for a period not to exceed 5 years. Algicides must be applied in an amount and in a manner that minimizes risk to nontarget organisms. The individual conducting the treatment must be certified by the Board of Pesticides Control for the use of aquatic pesticides. Application of an algicide may only occur after the Secchi disk transparency of the water is less than 2 meters. Relicensing is contingent upon an assessment of the water quality and the effectiveness of the phosphorus reduction plan for the watershed.

**2. Schedules of compliance.** Within the terms and conditions of a license, the department may establish a schedule of compliance for a final effluent limitation based on a water quality standard adopted after July 1, 1977. When a final effluent limitation is based on new or more stringent technology-based treatment requirements, the department may establish a schedule of compliance consistent with the time limitations permitted for compliance under the Federal Water Pollution Control Act, Public Law 92-500, as amended. A schedule of compliance may include interim and final dates for attainment of specific standards necessary to carry out the purposes of this subchapter and must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain those standards.

**3. Federal law.** When the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended, the department shall refuse to issue a license for the discharge of

pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after this determination must contain provisions, including effluent limitations, that the department determines necessary to carry out the purposes of this subchapter and any federal laws or regulations.

Notwithstanding the foregoing, the department is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances may be granted only in accordance with the Federal Water Pollution Control Act, Sections 316 and 301(k), as amended, and applicable regulations.

**4. License conditions affecting bypasses.** In fashioning license decisions and conditions, the department shall consider the extent to which operation of the licensed facility will require an allowance for bypass of wastewater from any portion of a treatment facility when necessary for essential maintenance to assure efficient operation of the licensed facility, when unavoidable to prevent loss of life, personal injury or severe property damage and otherwise subject to applicable effluent limitations and standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, reasonably controlled and infrequent bypasses will be necessary for this purpose, and there is no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal equipment downtime, the department shall fashion appropriate license allowances and conditions.

**5. Modification, reopening and revocation.** The following actions may be taken to reopen, modify or revoke and reissue waste discharge licenses. All actions taken under this subsection must be with notice to the licensee and all other interested parties of record and with opportunity for hearing. Actions may be appealed as set forth in sections 341-D and 346.

A. The department may reopen a license to add or change conditions or effluent limitations for toxic compounds identified in 40 Code of Federal Regulations, Section 401 or to include schedules of compliance to implement industrial pretreatment rules adopted by the board. Additionally, at the time of license issuance, the department may include as a condition of a license a provision for reopening the license for inclusion or change of specific limitations when facts available upon issuance indicate that changed circumstances or new information may be anticipated.

B. A request for modification of a license may be made by the licensee for any valid cause or changed circumstance. The department may initiate a license modification:

- (1) When necessary to correct legal, technical or procedural mistakes or errors;
- (2) When there has been or will be a substantial change in the activity or means of treatment that occurred after the time the license was issued;
- (3) When new information other than revised rules, guidance or test methods becomes available that would have justified different conditions at the time the license was issued;
- (4) When a pollutant not included in the license may be present in the discharge in quantities sufficient to require treatment, such as when the pollutant exceeds the level that can be achieved by the technology-based treatment standards appropriate to the licensee, or contribute to water

quality violations;

(5) When necessary to remove net limits based on pollutant concentration in intake water when the licensee is no longer eligible for them, consistent with federal law;

(6) When necessary to make changes as a result of the failure of one state to notify another state whose waters may be affected by a discharge; or

(7) When necessary to include pretreatment compliance schedules required pursuant to federal law. [1997, c. 794, Pt. A, §25 (new).]

C. Notwithstanding Title 5, section 10051, the board may modify, revoke or suspend a license when the board finds that any of the conditions specified in section 341-D, subsection 3 exist or upon an application for transfer of a license.

### **38 § 414-B. Publicly owned treatment works**

**1. Definition.** "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

**2. Pretreatment standards.** The department may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants that interfere with, pass through or otherwise are incompatible with those treatment works. In addition, the department may establish pretreatment standards for designated toxic pollutants that may be introduced into a publicly owned treatment works. In order to assume and properly administer the authority to issue and enforce permits under the Federal Water Pollution Control Act, the department may adopt rules as necessary, provided that the rules comply with the Federal Water Pollution Control Act or 40 Code of Federal Regulations, Part 403.

The department may require that any license for a discharge from a publicly owned treatment works include conditions to require the identification of pollutants, in terms of character and volume, from any significant source introducing pollutants subject to pretreatment standards, and to assure compliance with these pretreatment standards by each of these sources.

**2-A. Prohibited discharge through publicly owned treatment works.** The discharge to a publicly owned treatment works of any pollutant that interferes with, passes through or otherwise is incompatible with these works, or that is a designated toxic pollutant, is prohibited unless in compliance with pretreatment standards established for the applicable class or category of discharge. Violation of the terms and conditions of local pretreatment regulations or a user contract, permit or similar agreement between an industrial user and the owner of a publicly owned treatment works is prohibited. A violation may be enforced by the State or the owner of the treatment works or through joint action.

**3. User charges.** The department may impose as a condition in any license for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

**4. Acceptance of wastewater.** Municipal and quasi-municipal wastewater treatment facilities constructed wholly or in part with funding allocated pursuant to section 411 shall accept for treatment holding tank wastewater from any watercraft sewage pump-out facilities required pursuant to section 423-B. Municipal and quasi-municipal wastewater treatment facilities may charge an annual or per visit fee for this service to be approved by the commissioner.

### **38 § 414-C. Color pollution control**

**1. Color pollution control; finding.** The Legislature finds that further, rigorous control of color, odor and foam pollutants is consistent with modernization of the State's kraft pulp industry and that process technologies to accomplish this objective will enhance the competitive position of this industry.

**2. Best practicable treatment; color pollution.** For the purposes of section 414-A, subsection 1, paragraph D, "best practicable treatment" for color pollution control for discharges of color pollutants from the kraft pulping process is:

A. For discharges licensed and in existence prior to July 1, 1989:

(1) On July 1, 1998 and until December 31, 2000, 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

(2) On and after January 1, 2001, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

B. For discharges licensed for the first time after July 1, 1989, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis.

A discharge from a kraft pulp mill that is in compliance with this subsection is exempt from the provisions of subsection 3.

**3. Instream color pollution standard.** An individual waste discharge may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. This subsection applies to all flows greater than the minimum 30-day low flow that can be expected to occur with a frequency of once in 10 years. A discharge that is in compliance with this subsection is exempt from the provisions of subsection 2, paragraph A. Such a discharge may not exceed 175 pounds of color pollutants per ton of unbleached pulp produced after January 1, 2001.

**4. Schedule of compliance.**

**4-A. Compliance deadlines.**

**4-B. Progress report.**

**4-C. Color reduction evaluation.** If a discharge is not in compliance with either subsection 2 or 3 after January 1, 2001, the kraft pulp mill with a noncompliant discharge shall evaluate the potential for further color reductions. This evaluation must include the identification of each internal source of color, the contribution of color from each internal source, the options available for further color reductions for each internal source, the cost of these options for each internal source, the estimated final color discharge after implementation of the options given in pounds of color per ton of unbleached product and an assessment of the final impact on the in-stream color after implementation of the options including the amount of change expressed in color pollution units. This evaluation must be submitted to the commissioner for review no later than July 1, 2001 and by September 1, 2001 the commissioner shall modify the license to provide for a mill-specific best practicable treatment and compliance schedule.

**5. Interstate waters.** For the purposes of the commissioner's responsibilities under the Federal Water Pollution Control Act, Public Law 92-500, Section 401(a)(2), as amended, the commissioner shall find that the discharge of color pollution in excess of the standard established under subsection 2, paragraph A, into any surface water that subsequently enters the State affects the quality of the State's waters so as to violate the water quality



requirements of the State.

**6. Monitoring established.** The commissioner shall incorporate as part of the department's ongoing water quality monitoring program, monitoring of color, odor and foam pollutants.

**38 § 417. Certain deposits and discharges prohibited**

No person, firm, corporation or other legal entity may place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that it may fall or be washed into these waters, or in such a manner that the drainage from any of the following may flow or leach into these waters, except as otherwise provided by law: [1989, c. 890, Pt. A, §40 (aff); Pt. B, §34 (rpr).]

1. **Forest products refuse.** Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;
2. **Potatoes.** Any potatoes or any part or parts of potatoes; or
3. **Refuse.** Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse.

This section does not apply to solid waste disposal facilities in operation on July 1, 1977, owned by a municipality or quasi-municipal authority if the operation and maintenance of the facility has been or is approved by the department pursuant to the requirements of chapter 13 and the rules adopted thereunder.

### **38 § 418. Log driving and storage**

**1. Prohibitions.** No person, firm, corporation or other legal entity may place logs or pulpwood into the inland waters of this State for the purpose of driving the logs or pulpwood to pulp mills, lumber mills or any other destination, except to transport logs or pulpwood from islands to the mainland.

No person, firm, corporation or other legal entity may place logs or pulpwood on the ice of any inland waters of this State, except to transport logs or pulpwood from islands to the mainland.

No person, firm, corporation or other legal entity may place logs or pulpwood into the inland waters of this State for the purpose of storage or curing the logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, without a permit from the department as described in subsection 2.

**2. Storage; permit.** Whoever proposes to use the inland waters of this State for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, shall apply to the department for a permit for that use. Applications for these permits must be in a form prescribed by the commissioner.

If the department finds, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct that use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 5 years, with such terms and conditions as, in its judgment, may be necessary to protect the quality, standards and rights.

In the event the department determines it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application.

At that hearing the department shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of the use. If, after hearing, the department determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct the use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 5 years, with such terms and conditions as in its judgment may be necessary to protect the quality, standards and rights.

**3. Exception.**

### **38 § 418-A. Protection of the lower Penobscot River**

**1. Findings.** The Legislature finds that the lower Penobscot River is a unique and valuable natural resource. The lower Penobscot River serves as an example to the Nation that good public policy carefully implemented can restore and preserve our natural resources. The river has supported, and is again beginning to support, the greatest run of Atlantic salmon in North America, providing a unique fishing opportunity for Maine residents. The Legislature declares that the preservation and restoration of the lower Penobscot River is of the highest priority.

**2. Prohibition.** To protect water quality and aquatic resources, fisheries and fishing opportunities, and as an exercise of the public trust of the State, no person, firm, corporation, municipality or other legal entity may erect, operate, maintain or use any dam on that portion of the Penobscot River downstream from the Bangor Hydroelectric Company Dam located at Veazie to the southernmost point of Verona Island for any purpose not previously authorized by act, resolve or operation of law, unless specifically authorized by the Legislature.

**3. Study authorized.** Any person, firm, corporation, municipality or other legal entity may study the feasibility of erecting, operating, maintaining or using a dam for hydroelectric generation on the portion of the Penobscot River described in subsection 2.

**38 § 419-A. Prohibition on the use of tributyltin as an antifouling agent**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A.

A-1. "Acceptable release rate" means a measured release rate equal to or less than 4.0 micrograms per square centimeter per day at steady state conditions determined in accordance with federal Environmental Protection Agency testing procedures on tributyltin in antifouling paints under the Federal Insecticide, Fungicide and Rodenticide Act.

B. "Antifouling paint" means a compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.

C. "Commercial boatyard" means:

(1) A facility that engages for hire in the construction, storage, maintenance, repair or refurbishing of vessels; or

(2) An independent marine maintenance contractor who engages in any of the activities listed in subparagraph (1).

D. "Trap dip" means a liquid antifouling agent or preservative with which wooden lobster traps are treated.

E. "Tributyltin compound" means any organotin compound that has 3 normal butyl groups attached to a tin atom, with or without an anion, such as chloride, fluoride or oxide.

F. "Vessel" means a watercraft or other conveyance used as a means of transportation on water, whether self-propelled or otherwise. This definition includes barges and tugs.

**2. Prohibition on use.** Prohibition on use includes the following.

A. Except as provided in subsection 3, a person may not distribute, possess, sell, offer for sale, apply or offer for application any antifouling paint or trap dip containing a tributyltin compound.

B. No person may distribute, possess, sell, offer for sale, apply or offer for application any substance that contains a tributyltin compound in concentrated form that is labeled for mixing with paint or solvents to produce an antifouling paint for use on vessels, wooden lobster traps, fishing gear for marine waters, floats, moorings or piers.

C. The Board of Pesticides Control is the enforcement agency for this section. The Board of Pesticides Control shall make available a list of paints with acceptable tributyltin release rates by January 1, 1988.

D. This section shall take effect on January 1, 1988.

**3. Exceptions.** Exceptions to the prohibition are as follows.

A. A person may distribute or sell an antifouling paint containing a tributyltin compound with an acceptable release rate to the owner or agent of a commercial boatyard. The owner or agent of a commercial boatyard may purchase, possess and apply an antifouling paint containing tributyltin compounds with an acceptable release rate, if the antifouling paint is applied only within a commercial boatyard and is applied only to vessels exceeding 25 meters in length or that have aluminum

hulls.

B. This section does not prohibit the sale, application or possession of an antifouling paint containing a tributyltin compound, if the antifouling paint is in a spray can of 16 ounces or less, is commonly referred to as an outboard or lower drive unit paint and has an acceptable release rate.]

**38 § 420. Certain deposits and discharges prohibited**

No person, firm, corporation or other legal entity shall place, deposit, discharge or spill, directly or indirectly, into the ground water, inland surface waters or tidal waters of this State, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters, any of the following substances:

**1. Mercury.**

**1-A. Mercury.** Mercury or any compound containing mercury, whether organic or inorganic, as provided in this subsection.

A. After October 1, 2001, a person, firm, corporation or other legal entity may not discharge mercury or any compound containing mercury, whether organic or inorganic, in any concentration that increases the natural concentration of mercury in the receiving waters.

B. Until October 1, 2001, a person, firm, corporation or other legal entity may not discharge mercury or any compound containing mercury in a concentration greater than the concentration discharged as of the effective date of this paragraph.

The department shall establish interim discharge limits, based on procedures specified in rule, for each facility licensed under section 413 and subject to this paragraph. The discharge limits may not be less stringent statistically than the facility's discharge levels as of the effective date of this paragraph, except that the department shall take into account factors such as reduction in flow due to implementation of a wastewater conservation plan, seasonal variations and changes in levels of production. When the department has established an interim discharge limit for a facility, that limit is deemed to be the concentration discharged as of the effective date of this paragraph, and a facility shall comply with that interim discharge limit.

When considering an enforcement action in response to a violation of this paragraph before the department establishes an interim discharge limit for the facility, the commissioner shall consider factors such as reduction in flow due to implementation of a wastewater conservation plan, seasonal variations and changes in levels of production.

A person, firm, corporation or other legal entity that discharges mercury shall implement a mercury pollution prevention plan consistent with model plans developed by the department. The facility shall provide information concerning the status of implementation of the mercury pollution prevention plan to the department by December 15, 1999 and December 15, 2000. A mercury pollution prevention plan must include monitoring for mercury as required by the department, and the monitoring information must be provided to the department.

This paragraph is repealed October 1, 2001. [1999, c. 500, §2 (new).]

B.

C. A person, firm, corporation or other legal entity who, on January 1, 1971, was discharging any of the substances mentioned in this subsection in connection with an industrial process and, on or before December 31, 1971, filed with the board a statement indicating the amount of the substance so discharged on that date may not be considered in violation of this subsection as long as any discharge of mercury by that person, firm, corporation or other legal entity is less than 454 grams, or one pound, per year after January 1, 2000 and less than 45 grams, or 0.1 pound, per year after January 1, 2002. This paragraph is repealed January 1,

2004.

C.

D. Notwithstanding this subsection, whenever the commissioner finds that a concentration of 10 parts per billion of mercury or greater is present in any waters of this State or that danger to public health exists due to mercury concentrations of less than 10 parts per billion in any waters of this State, the commissioner may issue an emergency order to all persons discharging to those waters prohibiting or curtailing the further discharge of mercury and compounds containing mercury into those waters. These findings and the order must be served in a manner similar to that described in section 347-A, subsection 3, and the parties affected by that order have the same rights and duties as are described in section 347-A, subsection 3;

**2. Toxic or hazardous substances.** Any other toxic substance in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance, by the board. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence and degradability, the usual or potential presence of any organism affected by such substance in any waters of the State, the importance of such organism and the nature and extent of the effect of such substance on such organisms, either alone or in combination with substances already in the receiving waters or the discharge. As used in this subsection, "toxic substance" shall mean those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

A. Except as naturally occurs or as provided in paragraphs B and C, the board shall regulate toxic substances in the surface waters of the State at the levels set forth in federal water quality criteria as established by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended.

B. The board may change the statewide criteria established under paragraph A for a particular toxic substance established pursuant to the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended, as follows:

(1) By adopting site-specific numerical criteria for the toxic substance to reflect site-specific circumstances different from those used in, or any not considered in, the derivation of the statewide criteria. The board shall adopt site-specific numerical criteria only as part of a licensing proceeding pursuant to sections 413, 414 and 414-A; or

(2) By adopting alternative statewide criteria for the toxic substance. The alternative statewide criteria must be adopted by rule.

The board may substitute site-specific criteria or alternative statewide criteria for the criteria established in paragraph A only upon a finding that the site-specific criteria or alternative statewide criteria are based on sound scientific rationale and are protective of the most sensitive designated use of the water body, including, but not limited to, human consumption of fish and drinking water supply after treatment.

C. When surface water quality standards are not being met due to the presence of a toxic substance for which no water quality criteria have been established



pursuant to the Federal Water Pollution Control Act, Section 304(a), as amended, the board shall:

- (1) Adopt statewide numerical criteria by rule; or
- (2) Adopt site-specific numerical criteria as part of a licensing proceeding under sections 413, 414 and 414-A.

Nothing in this section restricts the authority of the board to adopt, by rule, statewide or site-specific numerical criteria for toxic substances that are not presently causing water quality standards to be violated.

D. For any criteria established under this subsection, the board shall establish the acceptable level of additional risk of cancer to be borne by the affected population from exposure to the toxic substance believed to be carcinogenic.

E. In regulating substances that are toxic to humans, including any rulemaking to regulate these substances, the board shall consider any information provided by the Department of Human Services.

F. The Department of Human Services may request that the board adopt or revise the statewide or site-specific criteria for any toxic substance based on the need to protect public health. If the request is filed with the board, the board may propose a rule and initiate a rule-making proceeding. The board shall incorporate in its proposal for rulemaking under this paragraph the statewide or site-specific criteria recommended by the Department of Human Services.

G. Numeric water quality criteria for 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin established by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended, do not apply until June 1, 1991, and only apply on that date if the board has not adopted through rulemaking or individual licensing proceedings under this section alternative numeric water quality criteria for 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin. Pursuant to section 414-A, subsection 2, the board shall establish schedules for compliance with criteria established under this section. These schedules must be consistent with the compliance deadlines established under the Federal Water Pollution Control Act, Public Law 92-500, Section 304(l), as amended.

H. Notwithstanding paragraphs D and G, the board may not adopt any numeric water quality criteria for, or acceptable level of additional cancer risk from exposure to, 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin prior to January 1, 1994.

I. Notwithstanding any other provision of this section, the following standards apply only to a bleach kraft pulp mill, referred to in this paragraph as a "mill."

(1) After July 31, 1998, a mill may not have a detectable quantity of 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin as measured in any internal waste stream of its bleach plant. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter II-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency.

(2) After December 31, 1999, a mill may not have a detectable quantity of 2, 3, 7, 8 - tetrachlorodibenzo-p-furan as measured in any internal waste stream of its bleach plant. The commissioner may extend this time frame up to 6 months for a mill if the commissioner determines, based on information presented by the mill, that compliance is not achievable by the deadline due to engineering constraints, availability of equipment or other

justifiable technical reasons. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower level of detection by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter II-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency. If a mill fails to achieve this requirement, as documented by confirmatory sampling, it shall conduct a site-specific evaluation of feasible technologies or measures to achieve it. This evaluation must be submitted to the commissioner within 6 months of the date of confirmatory sampling and include a timetable for implementation, acceptable to the commissioner, with an implementation date no later than December 31, 2002. The commissioner may establish a procedure for confirmatory sampling.

(3) After December 31, 2002, a mill may not discharge dioxin into its receiving waters. For purposes of this subparagraph, a mill is considered to have discharged dioxin into its receiving waters if 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8 - tetrachlorodibenzo-p-furan is detected in any of the mill's internal waste streams of its bleach plant and in a confirmatory sample at levels exceeding 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter II-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency, or if levels of dioxin, as defined in section 420-A, subsection 1 detected in fish tissue sampled below the mill's wastewater outfall are higher than levels in fish tissue sampled at an upstream reference site not affected by the mill's discharge or on the basis of a comparable surrogate procedure acceptable to the commissioner. The commissioner shall consult with the technical advisory group established in section 420-B, subsection 1, paragraph B, subparagraph (5) in making this determination and in evaluating surrogate procedures. The fish-tissue sampling test must be performed with differences between the average concentrations of dioxin in the fish samples taken upstream and downstream from the mill measured with at least 95% statistical confidence. If the mill fails to meet the fish-tissue sampling-result requirements in this subparagraph and does not demonstrate by December 31, 2003 to the commissioner's satisfaction that its wastewater discharge is not the source of elevated dioxin concentrations in fish below the mill, then the commissioner may pursue any remedy authorized by law.

(4) For purposes of documenting compliance with subparagraphs (1) to (3) the internal waste stream of a bleach plant must be sampled twice per quarter by the mill. The department may conduct its own sampling and analysis of the internal waste stream of a bleach plant. Analysis of the samples must be conducted by a 3rd-party laboratory using methodology approved by the United States Environmental Protection Agency. A mill shall report to the department for informational purposes the actual laboratory results including sample detection limits on a frequency to be established by the commissioner.

The commissioner shall assess the mill for the costs of any sampling performed by the department and any analysis performed for the department under this paragraph and credit funds received to the Maine Environmental Protection Fund.

The commissioner may reduce the frequency of sampling required by a mill after 3 consecutive years of sampling have demonstrated the mill does not

have a detectable quantity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8-tetrachlorodibenzo-p-furan.

**3. Radiological, chemical or biological warfare agents.** Radiological, chemical or biological warfare agents or high level radioactive wastes.

**38 § 423. Discharge of waste from watercraft**

No person, firm, corporation or other legal entity may discharge, spill or permit to be discharged sewage, garbage or other pollutants from watercraft, as defined in Title 12, section 7791, subsection 14, and including houseboats, into inland waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters.

Any watercraft, as defined in Title 12, section 7791, subsection 14, including houseboats, operated upon the inland waters of this State and having a permanently installed sanitary waste disposal system shall have securely affixed to the interior discharge opening of such sanitary waste disposal system a holding tank or suitable container for holding sanitary waste material so as to prevent its discharge or drainage into the inland waters of the State.

**38 § 423-A. Discharge of waste from motor vehicles**

No person, firm, corporation or other legal entity may discharge, spill or permit to be discharged sewage, garbage or other pollutants from motor vehicles or motor vehicle trailers into the inland or coastal waters, or on the ice of the inland or coastal waters, or onto the land in such a manner that the sewage, garbage or other pollutants may fall or be washed into these waters, or in such manner that the drainage from the discharge may flow into these waters. A person who violates the provisions of this section commits a civil violation subject to the provisions of section 349, subsection 2.

### **38 § 451. Enforcement generally**

After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it is unlawful for any person, firm, corporation, municipality, association, partnership, quasi-municipal body, state agency or other legal entity to dispose of any pollutants, either alone or in conjunction with another or others, in such manner as will, after reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere, lower the quality of those waters below the minimum requirements of such classifications, or where mixing zones have been established by the department, so lower the quality of those waters outside such zones, notwithstanding any exemptions or licenses which may have been granted or issued under sections 413 to 414-B.

The department may establish a mixing zone for any discharge at the time of application for a waste discharge license. The department shall attach a description of the mixing zone as a condition of a license issued for that discharge. After opportunity for a hearing in accordance with section 345-A, the department may establish by order a mixing zone with respect to any discharge for which a license has been issued pursuant to section 414 or for which an exemption has been granted by virtue of section 413, subsection 2.

The purpose of a mixing zone is to allow a reasonable opportunity for dilution, diffusion or mixture of pollutants with the receiving waters before the receiving waters below or surrounding a discharge will be tested for classification violations. In determining the extent of any mixing zone to be established under this section, the department may require from the applicant testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway; the size of the waterway and the rate of flow therein; any relevant seasonal, climatic, tidal and natural variations in such size, flow, nature and rate; the uses of the waterways in the vicinity of the discharge, and such other and further evidence as in the department's judgment will enable it to establish a reasonable mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof varies in order to take into account seasonal, climatic, tidal and natural variations in the size and flow of, and the nature and rate of, discharges to the waterway.

Where no mixing zones have been established by the department, it is unlawful for any person, corporation, municipality or other legal entity to dispose of any pollutants, either alone or in conjunction with another or others, into any classified surface waters, tidal flats or sections thereof, in such manner as will, after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere, lower the quality of any significant segment of those waters, tidal flats or sections thereof, affected by such discharge, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 413 to 414-B.

- 1. Time schedule.**
- 2. Revocation, modification or suspension of licenses**

### **38 § 451-A. Time schedule variances**

**1. Power to grant variances.** The department may grant a variance from any statutory water pollution abatement requirement, pursuant to section 414-A, subsection 1, paragraph D, to any municipality or quasi-municipal entity, hereinafter called the "municipality," upon application by it. The department may grant a variance only upon a finding that:

A. Federal funds for the construction of municipal waste water treatment facilities are not available for the project;

B. The municipality has demonstrated that it has completed preliminary plans acceptable to the department for the treatment of municipal wastes and for construction of that portion of the municipal sewage system intended to be served by the planned municipal treatment plant when that plant first begins operations;

C. Beginning on October 1, 1976, the municipality shall collect, from each discharger into its sewage system and each discharger not connected to the sewage system that has signed an approved agreement with the municipality pursuant to subsection 2, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewage system for which preliminary plans have been completed and approved pursuant to paragraph B. Actual current costs include but are not limited to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs. A municipality may provide, when permitted under the federal construction grant program, that in lieu of such annual fees paid by dischargers, the municipality may apportion an appropriate amount from general revenues to cover that share of fees to be paid by dischargers.

The funds collected or apportioned pursuant to this paragraph and interest collected thereon must be invested and expended pursuant to Title 30-A, subpart 9.

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the municipality is subsequently reimbursed by the federal construction grant program. The credit arrangement must be determined by agreement between the municipality and the discharger.

Variances are issued for a term certain not to exceed 3 years, and may be renewed, except that no variance may run longer than the time specified for completion of the municipal waste treatment facility. Notwithstanding the provisions of this subsection, no variance issued under this section may extend beyond July 1, 1988. Upon notice of the availability of federal funds, the municipality shall present to the department for approval an implementation schedule for designing, constructing and placing the waste collection and treatment facilities in operation.

Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the municipality to maintain or improve water quality.

**1-A. Time schedule for salt and sand-salt storage program.** An owner or operator of a salt or sand-salt storage area is not in violation of any ground water classification or reclassification adopted on or after January 1, 1980, at any time prior to October 1, 2003, with respect to discharges to the ground water from those facilities, if by that time the owner or operator has completed all steps then required to be completed by the schedules set forth in this subchapter. The commissioner shall administer this schedule according to the project priority list adopted by the board pursuant to section 411 and the provisions of this subsection.

A. Preliminary plans and engineers' estimates must be completed and submitted to the Department of Transportation by the following dates:

- (1) For Priority 1 and 2 projects - January 1996;
- (2) For Priority 3 project - January 1997;
- (3) For Priority 4 project - January 1998; and
- (4) For Priority 5 project - January 1999.

B. Arrangements for administration and financing must be completed within 12 months of the dates established in paragraph A for each priority category.

C. Detailed engineering and final plan formulation must be completed within 24 months of the dates established in paragraph A for each priority category.

D. Review of final plans with the Department of Transportation must be completed and construction commenced within 36 months of the dates established in paragraph A for each priority category. The Department of Transportation shall consult with the commissioner in reviewing final plans.

E. Construction must be completed and the facility in operation within 48 months of the dates established in paragraph A for each priority category

In no case may violations of the lowest ground water classification be allowed. In addition, no violations of any ground water classifications adopted after January 1, 1980, may be allowed for more than 3 years from the date of an offer of a state grant for the construction of those facilities or after January 1, 2003, whichever is earlier.

The department may not issue time schedule variances under subsection 1 to owners or operators of salt or sand-salt storage areas.

An owner or operator of a salt or sand-salt storage area who is in compliance with this section is exempt from the requirements of licensing under section 413, subsection 2-D.

An owner or operator is not in violation of a schedule established pursuant to this subsection if the owner or operator is eligible for a state grant to implement the schedule and the state grant is not available.

**2. Exemptions.** Any person, other than a municipality, maintaining a discharge subject to the requirements of section 413, 414 and 414-A shall be exempt from the requirements of section 414-A, subsection 1, paragraph D, Effluent Limitations and Best Practicable Treatment, if, by July 1, 1976 or on the commencement of a licensed discharge, whichever occurs later, such discharger presents to the Department of Environmental Protection and receives approval of a contract agreeing to connect to the existing or planned municipal sewage system immediately upon completion of construction and commencement of operation of such treatment plant. Such contract must insure that, in the case of a new discharge, such new discharge will not cause serious water quality problems, including but not limited to downgrading the receiving waters so as to make them unsuitable for currently existing uses. For the purpose of this section, a "new discharge" is a discharge which commences or a discharge which changes characteristics or increases licensed volume by more than 10% on or after the effective date of this Act.

**3. Failure to comply with agreement.** Failure to comply with any of the terms of an agreement approved pursuant to subsection 2 shall immediately render such agreement null and void and discharges included in such an agreement shall immediately cease or shall only discharge in accordance with the standards of best practicable treatment specified in section 414-A, subsection 1, paragraph D, and all other requirements of sections 414 and 414-A.

**4. Pretreatment systems.** Where a discharger otherwise exempted from constructing treatment facilities pursuant to this section will be required to pretreat effluents before



discharge into the municipal system pursuant to any requirement of state or federal law, the pretreatment system shall be installed upon commencement of the discharge.

**5. Fees.** Municipalities and quasi-municipal entities shall assess and collect the fees to be charged pursuant to this section in accordance with the provisions of chapter 11, and Title 30-A, chapters 161 and 213.

**6. Power to grant variances to owners of private dwellings.**

**7. Power to grant variances to owners of a single family dwelling.**

**38 § 464. Classification of Maine waters**

The waters of the State shall be classified in accordance with this article. 1985, c. 698, §15 (new).]]

**1. Findings; objectives; purpose.** The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare; in preventing disease; in promoting health; in providing habitat for fish, shellfish and wildlife; as a source of recreational opportunity; and as a resource for commerce and industry.

The Legislature declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine state waters. The Legislature further declares that in order to achieve this objective the State's goals are:

- A. That the discharge of pollutants into the waters of the State be eliminated where appropriate;
- B. That no pollutants be discharged into any waters of the State without first being given the degree of treatment necessary to allow those waters to attain their classification; and
- C. That water quality be sufficient to provide for the protection and propagation of fish, shellfish and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this article to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this article to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

**2. Procedures for reclassification.** Reclassification of state waters shall be governed by the following provisions.

- A. Upon petition by any person or on its own motion, the board may initiate, following public notice, and the commissioner shall conduct classification studies and investigations. Information collected during these studies and investigations must be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water classification.
- B. The board shall hold public hearings in the affected area, or reasonably adjacent to the affected area, for the purposes of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.
- C. The board may recommend changes in classification it deems necessary to the Legislature.
- D. The Legislature shall have sole authority to make any changes in the classification of the waters of the State

**2-A. Removal of designated uses; creation of subcategories of designated uses.**

Removal of designated uses and creation of subcategories of designated uses are governed by the provisions of this subsection and 40 Code of Federal Regulations, Part 131, as amended.

A. The board must conduct a use attainability analysis:

(1) Prior to proposing to the Legislature a designated use of a specific water body that does not include the uses specified in the Federal Water Pollution Control Act, Public Law 92-500, Section 101(a)(2), as amended; or

(2) Prior to proposing to the Legislature the removal of a designated use or the adoption of a subcategory of such a designated use that requires less stringent criteria.

B. The board may not recommend to the Legislature the removal of a designated use or the establishment of a subcategory of the use, if:

(1) It is an existing use as defined in section 464, subsection 4, paragraph F, subparagraph (1), unless another designated use is adopted requiring more stringent criteria;

(2) The use can be attained by implementing effluent limits required under the Federal Water Pollution Control Act, Public Law 92-500, Sections 301(b) and 306, as amended and by implementing cost-effective and reasonable best management practices for nonpoint source control;

(3) The water body in question is currently attaining the designated use; or

(4) Adoption of the recommendation allows the introduction of a new discharge or the expansion of an existing discharge into the water body in question that is not attaining the designated use.

C. The board may adopt any recommendation under this subsection only after holding a public hearing in the affected area or adjacent to the affected area. Conduct of the public hearing and the board's subsequent decision are governed by Title 5, chapter 375, subchapter IV.

D. A finding by the board that attainment of a designated use is not feasible must be supported by a demonstration that the conditions of 40 Code of Federal Regulations 131.10(g) are met.

E. If the board adopts a proposal to enact a designated use under paragraph A, subparagraph (1) or to remove a designated use or adopt a subcategory of a designated use under paragraph A, subparagraph (2), it shall forward that proposal to the joint standing committee of the Legislature having jurisdiction over natural resources matters at the next regular session of the Legislature. The board may not forward any other recommendation to the Legislature under this subsection. The Legislature has sole authority to make changes in the designated uses of the waters of the State, including the creation of a subcategory of a designated use.

F. For the purposes of this subsection, "designated use" means the use specified in water quality standards for each water body or segment under sections 465 to 465-C and sections 467 to 470 whether or not that use is being attained. A designated use includes its associated habitat characteristic under sections 465 to 465-C.

## **2-B. Temporary removal of designated uses; use attainability analysis and**

**creation of subcategory of uses for combined sewer overflows.** When designated uses are not being met as a result of combined sewer overflow discharges, the board may, consistent with this subsection and 40 Code of Federal Regulations, Part 131, temporarily remove designated uses that are not existing uses and create a temporary combined sewer overflow subcategory referred to as a CSO subcategory. Notwithstanding this subsection, it remains the goal of the State to fully maintain and restore water quality and eliminate or control combined sewer overflows as soon as practicable.

A. The board may create temporary CSO subcategories in classes B, C and SB and SC waters only when, due to the age, condition and design of an existing sewer system, technical or financial limitations prevent the timely attainment of all designated uses. In a CSO subcategory, uses are suspended only in the smallest area possible, for the shortest duration practicable and include only those designated uses and areas determined by the board to have the least potential for public benefit.

B. Notwithstanding subsections 2 and 2-A, CSO subcategories may be created by the board upon application by a municipality or quasi-municipality having licensed combined sewer overflow discharges, if the following standards are met.

(1) The applicant submits to the department for approval, with or without conditions, a study and plan, including an implementation schedule, for combined sewer overflow abatement, referred to as the CSO plan. In order for the board to create a CSO subcategory, the CSO plan must:

(a) Place high priority on abatement of combined sewer overflows that affect waters having the greatest potential for public use or benefit and plan to relocate any remaining discharges to areas where minimal impacts or losses of uses would occur; and

(b) Provide for the implementation as soon as practical of technology-based control methods to achieve best practicable treatment or ensure that cost-effective best management practices are being implemented.

(2) The board finds that attainment of a designated use is not feasible and such determination must be supported by demonstration that the conditions of 40 Code of Federal Regulations, Part 131.10(g) are met.

(3) The board finds that the uses to be affected are not existing uses as defined in subsection 4, paragraph F, subparagraph (1).

(4) The board finds that discharges from combined sewer overflows are not affecting uses that, in the board's judgment, constitute high value or important resources. In determining if a resource is high value or important the board shall consider its economic, recreational and ecological significance, the likelihood that removal of a combined sewer overflow will lead to utilization of that resource and the effects of other discharges or conditions on that resource.

C. Prior to creating any CSO subcategory, the board shall adopt rules regarding required studies, best practicable treatment, abatement options and related issues for combined sewer overflows. CSO subcategories may be created only after completion of the following.

(1) Either during or following development of combined sewer abatement plans, licensees shall conduct public hearings in the area that would be affected by a CSO subcategory. Notices and records of hearings must be kept and included as part of an application made to the board.

(2) Combined sewer overflow abatement plans must be submitted to the department for technical review and approval.

(3) Licensees proposing CSO subcategories shall submit formal applications to the board. Information in the application must include: description of the areas and uses to be affected, the time and duration of effects, comments received at public hearings, a description of continuing efforts to abate impacts and proposals for periodic review and update of abatement plans.

(4) The board shall provide public notice of applications for CSO subcategories and solicit public comments. The board shall also consult with agencies, public officials and other persons identified as having interest in the area to be affected. Based on the results of public hearings held by the applicant, the comments received and the nature of the application, the board may hold a public hearing.

(5) The board may approve, approve with conditions or deny applications for CSO subcategories. In cases when a water body is affected by combined sewer overflows from more than one licensee, the board shall, to the maximum extent possible, consider regional impacts and seek to establish common goals and uses for those waters.

(6) In a manner prescribed by the board, applicants receiving approval of CSO subcategories shall provide notice to the public in the area affected, describing the limitations on use of the water body.

- D. Upon creation of a CSO subcategory and removal of a designated use, the board may temporarily suspend or modify water quality criteria associated with that use as appropriate, but only to the extent and duration that those criteria are affected by the licensee for whom the assignment is made. Action by the board under this subsection does not relieve other discharge sources from any requirement to provide necessary treatment or best management practices or to comply with water quality criteria.
- E. Either independently or in conjunction with the requirements of subsection 3 and upon renewal of individual waste discharge licenses, the department shall periodically review all CSO subcategories. Reviews of CSO subcategories must take into consideration water quality criteria and uses, combined sewer overflow abatement technology, monitoring data, financial information and regulatory requirements affecting CSO subcategories

Upon petition by the department or any person or on its own motion, the board may, at its discretion, and following notice and opportunity for hearing, revise or revoke a CSO subcategory when it finds any change in the conditions under which the existing designation was made. The failure to comply with the measures specified in an approved combined sewer overflow abatement plan is cause for revocation of a CSO subcategory.

**3. Reports to the Legislature.** The department shall periodically report to the Legislature as governed by the following provisions.

- A. The commissioner shall submit to the first regular session of each Legislature a report on the quality of the State's waters which describes existing water quality, identifies waters that are not attaining their classification and states what measures are necessary for the attainment of the standards of their classification.
- B. The board shall, from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

C. The commissioner shall report annually to each regular session of the Legislature on the status of licensed discharges.

D.

**4. General provisions.** The classification system for surface waters established by this article shall be subject to the following provisions.

A. Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges:

- (1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that discharges into these waters that were licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist;
- (2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;
- (3) Any discharge into a tributary of GPA waters that by itself or in combination with other activities causes water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters;
- (4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;
- (5) Discharge of pollutants to any water of the State that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range;
- (6) New discharges of domestic pollutants to the surface waters of the State that are not conveyed and treated in municipal or quasi-municipal sewage facilities. For the purposes of this subparagraph, "new discharge" means any overboard discharge that was not licensed as of June 1, 1987, except those discharges that were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the department with clear and convincing evidence. For purposes of licensing, the department shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge will take place as a new discharge of domestic pollutants;
- (7) After the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under the Federal Water Pollution Control Act, Section 402(c)(1), any proposed license to which the administrator has formally objected under 40 Code of Federal Regulations, Section 123.44, as amended, or any license that would not provide for compliance with applicable requirements of that Act or regulations adopted thereunder;
- (8) Discharges for which the imposition of conditions can not ensure compliance with applicable water quality requirements of this State or another state;
- (9) Discharges that would, in the judgment of the Secretary of the United

States Army, substantially impair anchorage or navigation;

(10) Discharges that would be inconsistent with a plan or plan amendment approved under the Federal Water Pollution Control Act, Section 208(b); and

(11) Discharges that would cause unreasonable degradation of marine waters or when insufficient information exists to make a reasonable judgment whether the discharge would cause unreasonable degradation of marine waters.

Notwithstanding subparagraph (6), the department may issue a wastewater discharge license allowing for an increase in the volume or quantity of discharges of domestic pollutants from any university, college or school administrative unit sewage facility, as long as the university, college or school administrative unit has a wastewater discharge license valid on the effective date of this paragraph and the increase in discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11) or other applicable laws.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including, but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A and 465-B, those waters shall not be considered to be failing to attain their classification because of those natural conditions.

D. Except as otherwise provided in this paragraph, for the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream must be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years. The department may use a different flow rate only for those toxic substances regulated under section 420. To use a different flow rate, the department must find that the flow rate is consistent with the risk being addressed.

E. The waters contained in excavations approved by the department for wastewater treatment purposes are unclassified waters.

F. The antidegradation policy of the State is governed by the following provisions.

(1) Existing in-stream water uses and the level of water quality necessary to protect those existing uses must be maintained and protected. Existing in-stream water uses are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard for classification of the particular water body.

Determinations of what constitutes an existing in-stream water use on a particular water body must be made on a case-by-case basis by the department. In making its determination of uses to be protected and maintained, the department shall consider designated uses for that water body and:

(a) Aquatic, estuarine and marine life present in the water body;

(b) Wildlife that utilize the water body;

(c) Habitat, including significant wetlands, within a water body supporting existing populations of wildlife or aquatic, estuarine or

marine life, or plant life that is maintained by the water body;

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy; and

(e) Any other evidence that, for divisions (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for division (d), demonstrates its historical or social significance.

(1-A) The department may only issue a waste discharge license pursuant to section 414-A, or approve a water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, when the department finds that:

(a) The existing in-stream use involves use of the water body by a population of plant life, wildlife, or aquatic, estuarine or marine life, or as aquatic, estuarine, marine, wildlife, or plant habitat, and the applicant has demonstrated that the proposed activity would not have a significant impact on the existing use. For purpose of this division, significant impact means:

(i) Impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or

(b) The existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of an existing level of water quality and the applicant has demonstrated that the proposed activity would not result in significant degradation of the existing use.

The department shall determine what constitutes a population of a particular species based upon the degree of geographic and reproductive isolation from other individuals of the same species.

If the department fails to find that the conditions of this subparagraph are met, water quality certification, pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, is denied.

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality must be maintained and protected. For purposes of this paragraph, the following waters are considered outstanding national resources: those water bodies in national and state parks and wildlife refuges; public reserved lands; and those water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and listed under sections 467, 468 and 469.

(3) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the Federal Water Pollution Control Act, Section 401, Public Law 92-500, as amended, if the standards of classification of the water body and the requirements of this paragraph are met. The department may issue a discharge license or approve water quality certification for a project affecting a water body in which the



standards of classification are not met if the project does not cause or contribute to the failure of the water body to meet the standards of classification.

(4) When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that that water be reclassified in the next higher classification.

(5) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the action is in conformance with subparagraph (3). That finding must be made following procedures established by rule of the board.

G.

H. A hydropower project, as defined by section 632, constructed after the effective date of this paragraph may cause some change to the habitat and aquatic life of the project's impoundment and the waters immediately downstream of and measurably affected by the project, so long as the habitat and aquatic life criteria of those waters' classification under sections 465, 465-A, 467, and 468 are met. This paragraph does not constitute any change in the criteria for habitat and aquatic life under sections 465 and 465-A.

I.

**5. Rulemaking.** In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this article. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and as necessary thereafter, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Rules adopted pursuant to this subsection shall become effective upon adoption. Rules adopted pursuant to this subsection shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review during the next regular session of the Legislature following adoption. This committee may submit legislation it deems necessary to clarify legislative intent regarding rules adopted pursuant to this subsection. If the committee takes no action, the rules shall continue in effect.

**6. Implementation of biological water quality criteria.** The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid wastewater discharge license that was issued prior to the effective date of this article, the board may modify that license in accordance with section 341-D, subsection 3 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological

community.

B. When a discharge license is issued after the effective date of this article and before the effective date of the rules adopted pursuant to subsection 5, the department shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

C. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 5 shall comply with the water quality criteria of this article.

**7. Interdepartmental coordination.** The commissioner, the Commissioner of Marine Resources and the Commissioner of Human Services shall jointly:

A. Make available accurate and consistent information on the requirements of this section, section 411-A and section 414-A, subsection 1-B;

B. Certify wastewater treatment and disposal technologies which can be used to replace overboard discharges.

**8. Development of group systems.** Subject to the provisions of section 414-A, subsection 1-B, the commissioner shall coordinate the development and implementation of wastewater treatment and disposal systems serving more than one residence or commercial establishment when individual replacement systems are not feasible.

**9. Existing hydropower impoundments managed as great ponds; habitat and aquatic life criteria.** For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and licensing of modifications under section 636, the hydropower project located on the water body referenced in section 467, subsection 7, paragraph C, subparagraph (1), division (b-1) is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundments if:

A. The project is in existence on the effective date of this subsection;

B. The project creates an impoundment that remains classified under section 465-A after June 30, 1992;

C. The project creates an impoundment that is subject to water level fluctuations that have an effect on the habitat and aquatic life in the littoral zone so that the habitat and aquatic life differ significantly from that found in an unimpounded great pond; and

D. The existing impounded waters are able to support all species of fish indigenous to those waters and the structure and function of the resident biological community in the impounded waters is maintained.

All other hydropower projects with impoundments in existence on the effective date of this subsection that remain classified under section 465-A after June 30, 1992 and that do not attain the habitat and aquatic life criteria of that section must, at a minimum, satisfy the aquatic life criteria contained in section 465, subsection 4, paragraph C.

When the actual water quality of the impounded waters attain any more stringent characteristic or criteria of those waters' classification under section 465-A that water quality must be maintained and protected.

**10. Existing hydropower impoundments managed under riverine classifications; habitat and aquatic life criteria.** For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and the

licensing of modifications under section 636, hydropower projects in existence on the effective date of this subsection, the impoundments of which are classified under section 465, are subject to the provisions of this subsection in recognition of some changes to aquatic life and habitat that have occurred due to the existing impoundments of these projects.

A. Except as provided in paragraphs B and D, the habitat characteristics and aquatic life criteria of Classes A and B are deemed to be met in the existing impoundments classified A or B of those projects if:

(1) The impounded waters achieve the aquatic life criteria of section 465, subsection 4, paragraph C.

B. The habitat characteristics and aquatic life criteria of Classes A and B are not deemed to be met in the existing impoundments of those projects referred to in paragraph A if:

(1) Reasonable changes can be implemented that do not significantly affect existing energy generation capability; and

(2) Those changes would result in improvement in the habitat and aquatic life of the impounded waters.

If the conditions described in subparagraphs (1) and (2) occur, those changes must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained.

C. If the conditions described in paragraph B, subparagraphs (1) and (2) occur at a project in existence on the effective date of this subsection, the impoundment of which is classified C, the changes described in paragraph B, subparagraphs (1) and (2) must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained

D. When the actual water quality of waters affected by this subsection attains any more stringent characteristic or criteria of those waters' classification under sections 465, 467 and 468, that water quality must be maintained and protected.

**11. Downstream stretches affected by existing hydropower projects.** Hydropower projects in existence on the effective date of this subsection that are located on water bodies referenced in section 467, subsection 4, paragraph A, subparagraphs (1) and (7), and section 467, subsection 12, paragraph A, subparagraphs (7) and (9) are subject to the provisions of this subsection.

For the purposes of water quality certification of hydropower projects under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications to these hydropower projects under section 636, the habitat characteristics and aquatic life criteria of Class A are deemed to be met in the waters immediately downstream of and measurably affected by the projects listed in this subsection if the criteria contained in section 465, subsection 4, paragraph C are met.

**38 § 465. Standards for classification of fresh surface waters**

The department shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

**1. Class AA waters.** Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water and navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There may be no direct discharge of pollutants to Class AA waters, except storm water discharges that are in compliance with state and local requirements.

**2. Class A waters.** Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. Direct discharges to these waters licensed after January 1, 1986, are permitted only if, in addition to satisfying all the requirements of this article, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the department shall require the applicant to objectively demonstrate to the department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist. There may be no deposits of any material on the banks of these waters in any manner so that transfer of pollutants into the waters is likely.

**3. Class B waters.** Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of *Escherichia coli* bacteria of human origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

**4. Class C waters.** Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. Between May 15th and September 30th, the number of *Escherichia coli* bacteria of human origin in these waters may not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The board shall promulgate rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

### **38 § 465-A. Standards for classification of lakes and ponds**

The department shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers that are defined as great ponds pursuant to section 480-B are classified as GPA or as specifically provided in sections 467 and 468.

**1. Class GPA waters.** Class GPA shall be the sole classification of great ponds and natural ponds and lakes less than 10 acres in size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation and navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural. [1985, c. 698, § 15 (new).]

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations and shall be free of culturally induced algal blooms which impair their use and enjoyment. The number of *Escherichia coli* bacteria of human origin in these waters may not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There may be no new direct discharge of pollutants into Class GPA waters. Aquatic pesticide treatments or chemical treatments for the purpose of restoring water quality approved by the department and storm water discharges that are in compliance with state and local requirements are exempt from the no discharge provision. Discharges into these waters licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as permitted pursuant to section 480-C. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

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### **38 § 465-B. Standards for classification of estuarine and marine waters**

The department shall have 3 standards for the classification of estuarine and marine waters.

**1. Class SA waters.** Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish and navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

**2. Class SB waters.** Class SB waters shall be the 2nd highest classification.

A. Class SB waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hyroelectric power generation and navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas, United State Department of Food and Drug Administration.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

**3. Class SC waters.** Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation and navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program Manual

of Operations, Part I, Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.



### 38 § 466. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. **Aquatic life.** "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

2. **As naturally occurs.** "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measurable effects of human activity.

2-A. **Color pollution unit.** "Color pollution unit" means that measure of water color derived from comparison with a standard measure prepared according to the specifications of the current edition of "Standard Methods for Examination of Water and Wastewater," adopted by the United States Environmental Protection Agency, or an equivalent measure.

2-B. **Combined sewer overflow.** "Combined sewer overflow" means a discharge of excess wastewater from a municipal or quasi-municipal sewerage system that conveys both sanitary wastes and storm water in a single pipe system and that is in direct response to a storm event or snowmelt. Combined sewer overflow discharges do not include dry weather discharges that occur as a result of nonstorm events or are caused solely by groundwater infiltration.

3. **Community function.** "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. **Community structure.** "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proportion each taxonomic group represents of the total community.

5. **Direct discharge.** "Direct discharge" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

6. **Domestic pollutants.** "Domestic pollutants" means any material, including, without limitation, sanitary wastes, waste water from household activities or waste waters with similar chemical characteristics, which are generated at residential or commercial locations.

7. **Estuarine and marine life.** "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

8. **Indigenous.** "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature.

9. **Natural.** "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

9-A. **Overboard discharge.** "Overboard discharge" means discharge to the surface waters of the State of domestic pollutants not conveyed to and treated in municipal or quasi-municipal sewerage treatment facilities.

9-B. **Quasi-municipal.** "Quasi-municipal" means any form of ownership and management by a governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public waste water

treatment services, but which is not a state governmental unit.

**9-C. Pounds per ton as unit of measure.** "Pounds per ton" means the unit for measurement of color in the discharge from the production of wood pulp. The numerator of this unit is the product of the number of color pollution units multiplied by 8.34 multiplied by the volume of effluent discharged measured in millions of gallons. The denominator of this unit is measured in tons of actual production of unbleached wood pulp as measured on an air dried basis.

**10. Resident biological community.** "Resident biological community" means aquatic life expected to exist in a habitat which is free from the influence of the discharge of any pollutant. This shall be established by accepted biomonitoring techniques.

**11. Unimpaired.** "Unimpaired" means without a diminished capacity to support aquatic life.

**11-A. Use attainability analysis.** "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use in a water body. The assessment may include consideration of physical, chemical, biological and economic factors.

**12. Without detrimental changes in the resident biological community.** "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

**38 § 467. Classification of major river basins**

All surface waters lying within the boundaries of the State that are in river basins having a drainage area greater than 100 square miles that are not classified as lakes or ponds are classified in this section.

**1. Androscoggin River Basin.** A. Androscoggin River, main stem, including all impoundments.

- (1) From the Maine-New Hampshire boundary to its confluence with the Ellis River - Class B.
- (2) From its confluence with the Ellis River to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction - Class C.

B. Little Androscoggin River Drainage.

- (1) Little Androscoggin River, main stem.
  - (a) From the outlet of Bryant Pond to the Maine Central Railroad bridge in South Paris - Class A.
  - (b) From the Maine Central Railroad bridge in South Paris to its confluence with the Androscoggin River - Class C.
- (2) Little Androscoggin River, tributaries - Class B unless otherwise specified.
  - (a) Outlet of Thompson Lake in Oxford - Class C.

C. Androscoggin River, Upper Drainage; that portion within the State lying above the river's most upstream crossing of the Maine-New Hampshire boundary - Class A unless otherwise specified.

- (1) Cupsuptic River and its tributaries - Class AA.
- (2) Kennebago River and its tributaries except for the impoundment of the dam at Kennebago Falls - Class AA.
- (3) Rapid River, from a point located 1,000 feet downstream of Middle Dam to its confluence with Umbagog Lake - Class AA.

D. Androscoggin River, minor tributaries - Class B unless otherwise specified.

- (1) All tributaries of the Androscoggin River that enter between the Maine-New Hampshire boundary in Gilead and its confluence with, and including, the Ellis River and that are not otherwise classified - Class A.
- (2) Bear River - Class AA.
- (3) Sabattus River from Sabattus Lake to limits of the Lisbon urban area - Class C.
- (4) Webb River - Class A.
- (5) Swift River, and its tributaries, above the Mexico-Rumford boundary - Class A.
- (6) Nezinscot River, east and west branches above their confluence in Buckfield - Class A.

**2. Dennys River Basin.** A. Dennys River, main stem.

- (1) From the outlet of Meddybemps Lake to the Route 1 bridge - Class AA.
- (2) From the Route 1 bridge to tidewater - Class B. Further, the Legislature finds

that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

B. Dennys River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the Route 1 bridge - Class B.

**3. East Machias River Basin.** A. East Machias River, main stem.

(1) From the outlet of Pocomoonshine Lake to a point located 0.25 miles above the Route 1 bridge - Class AA.

(2) From a point located 0.25 miles above the Route 1 bridge to tidewater - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

B. East Machias River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the Route 191 bridge in Jacksonville - Class B.

(2) Beaverdam Brook - Class AA.

**4. Kennebec River Basin.** A. Kennebec River, main stem.

(1) From the east outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(2) From the west outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(3) From a point 1,000 feet below Moosehead Lake to its confluence with Indian Pond - Class AA.

(4) From Harris Dam to a point located 1,000 feet downstream from Harris Dam - Class A.

(5) From a point located 1,000 feet downstream from Harris Dam to its confluence with the Dead River - Class AA.

(6) From its confluence with the Dead River to the confluence with Wyman Lake, including all impoundments - Class A.

(7) From the Wyman Dam to its confluence with the impoundment formed by the Williams Dam - Class A.

(8) From the confluence with the Williams impoundment to the Route 201A bridge in Anson-Madison, including all impoundments - Class A.

(9) From the Route 201A bridge in Anson-Madison to the Fairfield-Skowhegan boundary, including all impoundments - Class B.

(10) From the Fairfield-Skowhegan boundary to its confluence with Messalonskee Stream, including all impoundments - Class C.

(11) From its confluence with Messalonskee Stream to the Sidney-Augusta boundary, including all impoundments - Class B.

(12) From the Sidney-Augusta boundary to the Father John J. Curran Bridge in Augusta, including all impoundments - Class B.

(13) From the Father John J. Curran Bridge in Augusta to a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class C. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this

use must be maintained.

(14) From a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point, to a line across the southwesterly area of Merrymeeting Bay formed by an extension of the Brunswick-Bath boundary across the bay in a northwesterly direction to the westerly shore of Merrymeeting Bay and to a line drawn from Chop Point in Woolwich to West Chop Point in Bath - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

**B. Carrabassett River Drainage.**

**(1) Carrabassett River, main stem.**

(a) Above a point located 1.0 mile above the dam in Kingfield - Class AA.

(b) From a point located 1.0 mile above the dam in Kingfield to a point located 1.0 mile above the railroad bridge in North Anson - Class A.

(c) From a point located 1.0 mile above the railroad bridge in North Anson to its confluence with the Kennebec River - Class B.

**(2) Carrabassett River, tributaries - Class A unless otherwise specified.**

(a) South Branch Carrabassett River - Class AA. The Legislature finds, however, that permitted water withdrawal from this river segment provides significant social and economic benefits and that this existing use may be maintained.

(b) All tributaries entering the Carrabassett River below the Wire Bridge in New Portland - Class B.

(c) West Branch Carrabassett River above its confluence with Alder Stream - Class AA.

**C. Cobbosseecontee Stream Drainage.**

**(1) Cobbosseecontee Stream, main stem - Class B.**

**(2) Cobbosseecontee Stream, tributaries - Class B.**

**D. Dead River Drainage.**

**(1) Dead River, main stem.**

(a) From the Long Falls Dam to a point 5,100 feet below the dam - Class A.

(b) From a point 5,100 feet below Long Falls Dam to its confluence with the Kennebec River - Class AA.

**(2) Dead River, tributaries - Class A unless otherwise specified.**

(a) Black Brook below Dead River Hatchery - Class B.

(b) Stratton Brook, Eustis, from the upper Route 16/27 bridge to its confluence with Flagstaff Lake - Class B.

(c) Spencer Stream and Little Spencer Stream - Class AA.

**E. Messalonskee Stream Drainage.**

- (1) Messalonskee Stream, main stem.
    - (a) From the outlet of Messalonskee Lake to its confluence with the Kennebec River, including all impoundments except Rice Rips Lake - Class C.
  - (2) Messalonskee Stream, tributaries - Class B.
- F. Moose River Drainage.
- (1) Moose River, main stem.
    - (a) Above its confluence with Number One Brook in Beattie Township - Class A.
    - (b) From its confluence with Number One Brook in Beattie Township to its confluence with Attean Pond - Class AA.
    - (c) From the outlet of Attean Pond to the Route 201 bridge in Jackman - Class A.
    - (d) From the Route 201 bridge in Jackman to its confluence with Long Pond - Class B.
    - (e) From the outlet of Long Pond to its confluence with Moosehead Lake - Class A.
  - (2) Moose River, tributaries - Class A.
- G. Sandy River Drainage.
- (1) Sandy River, main stem.
    - (a) From the outlet of Sandy River Ponds to the Route 142 bridge in Phillips - Class AA.
    - (b) From the Route 142 bridge in Phillips to its confluence with the Kennebec River - Class B.
  - (2) Sandy River, tributaries - Class B unless otherwise specified.
    - (a) All tributaries entering above the Route 142 bridge in Phillips - Class A.
    - (b) Wilson Stream, main stem, below the outlet of Wilson Pond - Class C.
- H. Sebasticook River Drainage.
- (1) Sebasticook River, main stem, including all impoundments.
    - (a) From the confluence of the East Branch and the West Branch to its confluence with the Kennebec River - Class C.
  - (2) Sebasticook River, tributaries - Class B unless otherwise specified.
    - (a) Sebasticook River, East Branch main stem, from the outlet of Lake Wassookeag to its confluence with Corundel Lake - Class B.
    - (b) Sebasticook River, East Branch main stem, from the outlet of Corundel Lake to its confluence with the West Branch - Class C.
    - (c) Sebasticook River, West Branch main stem, from the outlet of Great Moose Lake to its confluence with the East Branch, including all impoundments - Class C.

I. Kennebec River, minor tributaries - Class B unless otherwise specified.

- (1) All minor tributaries entering above Wyman Dam that are not otherwise classified - Class A.
- (2) All tidal portions of tributaries entering between Edwards Dam and a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class C.
- (3) Cold Stream, West Forks Plantation - Class AA.
- (4) Moxie Stream, Moxie Gore, below a point located 1,000 feet downstream of the Moxie Pond dam - Class AA.
- (5) Austin Stream and its tributaries above the highway bridge of Route 201 in the Town of Bingham - Class A.

**5. Machias River Basin.**

A. Machias River, main stem.

- (1) From the outlet of Fifth Machias Lake to a point 100 feet upstream of the Route 1A bridge in Whitneyville - Class AA.
- (2) From a point 100 feet upstream of the Route 1A bridge in Whitneyville to tidewater - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

B. Machias River, tributaries - Class A unless otherwise specified.

- (1) All tributaries entering below Route 1A in Whitneyville - Class B.
- (2) Mopang Stream, from the outlet of Mopang Second Lake to its confluence with the Machias River - Class AA.
- (3) Old Stream, from the outlet of First Lake to its confluence with the Machias River - Class AA.
- (4) West Branch of the Machias River, from the outlet of Lower Sabao Lake to its confluence with the Machias River - Class AA.
- (5) New Stream, in Northfield and Wesley - Class AA.
- (6) Crooked Stream - Class AA.

**5-A. Medomak River Basin. A. Medomak River, main stem.**

- (1) From its source in the Town of Liberty to the Wagner Bridge Road in the Town of Waldoboro - Class A.
- (2) From the Wagner Bridge Road in the Town of Waldoboro to the bridge at old Route 1 - Class B.

B. Medomak River, tributaries - Class A unless otherwise specified.

**6. Mousam River Basin.**

A. Mousam River, main stem.

- (1) From the outlet of Mousam Lake to a point located 0.5 mile above Mill Street in Springvale - Class B.
- (2) From a point located 0.5 mile above Mill Street in Springvale to its confluence with Estes Lake - Class C.

(3) From the outlet of Estes Lake to tidewater - Class B.

B. Mousam River, tributaries - Class B.

**6-A. Narraguagus River Basin. A. Narraguagus River, main stem.**

(1) From the outlet of Eagle Lake to the confluence with the West Branch of the Narraguagus River in Cherryfield - Class AA.

(2) From the confluence with the West Branch of the Narraguagus River in Cherryfield to tidewater - Class B.

B. Narraguagus River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the river's confluence with the West Branch - Class B.

(2) West Branch of the Narraguagus River - Class AA.

(3) Baker Brook - Class AA.

(4) Pork Brook - Class AA.

(5) Schoodic Brook - Class AA.

(6) Shorey Brook - Class AA.

**7. Penobscot River Basin. A. Penobscot River, main stem.**

(1) From the confluence of the East Branch and the West Branch to the confluence of the Mattawamkeag River, including all impoundments - Class C.

(2) From the confluence of the Mattawamkeag River to the confluence of Cambolasse Stream - Class B.

(3) From the confluence of Cambolasse Stream to a point 1.0 mile above the West Enfield Dam - Class B.

(4) From a point 1.0 mile above the West Enfield Dam to the West Enfield Dam - Class C.

(5) From the West Enfield Dam, including the Stillwater Branch, to the Veazie Dam, including all impoundments - Class B.

(6) From the Veazie Dam, but not including the Veazie Dam, to the Maine Central Railroad bridge in Bangor-Brewer - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

(7) From the Maine Central Railroad bridge in Bangor to a line extended in an east-west direction from the confluence of Reeds Brook in Hampden - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

B. Penobscot River, East Branch Drainage.

(1) East Branch of the Penobscot River, main stem.

(a) Above its confluence with Grand Lake Mattagamon - Class A.

(b) From the dam at the outlet of Grand Lake Mattagamon to a point located 1,000 feet downstream from the dam - Class A.

(c) From a point located 1,000 feet downstream from the dam at the outlet of Grand Lake Mattagamon to its confluence with the West Branch



- Class AA.

(2) East Branch of the Penobscot River, tributaries - Class A unless otherwise specified.

(a) All tributaries, any portion of which is located within the boundaries of Baxter State Park - Class AA.

(b) Sawtelle Brook, from a point located 1,000 feet downstream from the dam at the outlet of Sawtelle Deadwater to its confluence with the Seboeis River - Class AA.

(c) Seboeis River, from the outlet of Snowshoe Lake to its confluence with the East Branch - Class AA.

(d) Wassataquoik Stream, from the boundary of Baxter State Park to its confluence with the East Branch - Class AA.

(e) Webster Brook, from a point located 1,000 feet downstream from the dam at the outlet of Telos Lake to its confluence with Webster Lake - Class AA. [1989, c. 764, §7 (rpr).]

C. Penobscot River, West Branch Drainage.

(1) West Branch of the Penobscot River, main stem.

(a) From the dam at the outlet of Seboomook Lake to a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake - Class B.

(b) From a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake to its confluence with Chesuncook Lake - Class A.

(b-1) From its confluence with Chesuncook Lake to Ripogenus Dam - Class GPA as modified by section 464, subsection 9.

(c) From Ripogenus Dam through Ripogenus Gorge to the McKay powerhouse - Class B.

(d) From the McKay powerhouse to its confluence with Ambajejus Lake - Class A.

(e) From the outlet of Elbow Lake to the outlet of Ferguson and Quakish Lakes - Class B.

(f) From the outlet of Ferguson and Quakish Lakes to its confluence with the East Branch of the Penobscot River, including all impoundments - Class C.

(2) West Branch of the Penobscot River, tributaries - Class A unless otherwise specified.

(a) Those segments of any tributary that are within the boundaries of Baxter State Park - Class AA.

(b) Those tributaries above the confluence with the Debsconeag Deadwater, any portion of which is located within the boundaries of Baxter State Park - Class AA.

(c) Millinocket Stream, from the railroad bridge near the Millinocket-T.3 Indian Purchase boundary to its confluence with the West Branch Canal - Class B.

- (d) Millinocket Stream from the confluence of the West Branch Canal to its confluence with the West Branch of the Penobscot River - Class C.

D. Mattawamkeag River Drainage.

- (1) Mattawamkeag River, main stem.
  - (a) From the confluence of the East Branch and the West Branch to the Kingman-Mattawamkeag boundary - Class A.
  - (b) From the Kingman-Mattawamkeag boundary to its confluence with the Penobscot River - Class AA.
- (2) Mattawamkeag River, tributaries - Class A unless otherwise specified.
  - (a) East Branch Mattawamkeag River above Red Bridge - Class B.
  - (b) West Branch Mattawamkeag River from Interstate 95 to its confluence with Mattawamkeag Lake - Class B.
  - (c) Fish Stream - Class B.

E. Piscataquis River Drainage.

- (1) Piscataquis River, main stem.
  - (a) From the confluence of the East Branch and the West Branch to the Route 15 bridge in Guilford - Class A.
  - (b) From the Route 15 bridge in Guilford to the Maine Central Railroad bridge in Dover-Foxcroft - Class B.
  - (c) From the Maine Central Railroad bridge in Dover-Foxcroft to its confluence with the Penobscot River - Class B.
- (2) Piscataquis River, tributaries - Class B unless otherwise specified.
  - (a) Except as otherwise provided, East and West Branches of the Piscataquis River and their tributaries above their confluence near Blanchard - Class A.
  - (b) East Branch of the Piscataquis River from 1,000 feet below Shirley Pond to its confluence with the West Branch - Class AA.
  - (c) Pleasant River, East Branch and its tributaries - Class A.
  - (d) Pleasant River, West Branch, from the outlet of Fourth West Branch Pond to its confluence with the East Branch - Class AA.
  - (e) Pleasant River, West Branch tributaries - Class A.
  - (f) Sebec River and its tributaries above Route 6 in Milo - Class A.
    - (g) West Branch of the Piscataquis River from 1,000 feet below West Shirley Bog to its confluence with the East Branch - Class AA.
  - (h) Black Stream - Class A.
  - (i) Cold Stream - Class A.
  - (j) Kingsbury Stream - Class A.
  - (k) Schoodic Stream - Class A.

(l) Scutaze Stream - Class A.

(m) Sebois Stream, including East and West Branches - Class A.

F. Penobscot River, minor tributaries - Class B unless otherwise specified.

(1) Cambolasse Stream (Lincoln) below the Route 2 bridge - Class C.

(2) Great Works Stream (Bradley) and its tributaries above the Route 178 bridge - Class A.

(3) Kenduskeag Stream (Bangor) below the Bullseye Bridge - Class C.

(4) Mattanawcook Stream (Lincoln) below the outlet of Mattanawcook Pond - Class C.

(5) Olamon Stream and its tributaries above the bridge on Horseback Road - Class A.

(6) Passadumkeag River and its tributaries - Class A, unless otherwise specified.

(a) Passadumkeag River from the Pumpkinhill Dam to its confluence with the Penobscot River - Class AA.

(b) Ayers Brook - Class AA.

(7) Sourdabscook Stream above head of tide - Class AA.

(8) Sunkhaze Stream and its tributaries - Class AA.

(9) Birch Stream - Class A.

(10) Hemlock Stream - Class A.

(11) Mattamiscontis Stream - Class A.

(12) Medunkeunk Stream - Class A.

(13) Rockabema Stream - Class A.

(14) Salmon Stream - Class A.

## **8. Pleasant River Basin.**

A. Pleasant River, main stem.

(1) From the outlet of Pleasant River Lake to the Maine Central Railroad bridge - Class AA.

(2) From the Maine Central Railroad bridge to tidewater - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

B. Pleasant River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the Maine Central Railroad bridge - Class B.

(2) Bog Stream (Deblois) - Class B.

(3) Beaver Meadow Brook (Deblois) - Class B.

## **9. Presumpscot River Basin.**

A. Presumpscot River, main stem.

(1) From the outlet of Sebago Lake to its confluence with Dundee Pond - Class A.

(1-A) From the outlet of Dundee Pond to its confluence with the Pleasant River - Class A.

For the purposes of water quality certification of the hydropower project at the Dundee Dam under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing modifications to this hydropower project under section 636 and any other licensing proceeding affecting this project, the habitat characteristics and aquatic life criteria of Class A are deemed to be met in the waters immediately downstream and measurably affected by that project if the criteria of section 465, subsection 3, paragraphs A and C are met.

(2) From its confluence with the Pleasant River to U.S. Route 202 - Class B. Further, there may be no new direct discharges to this segment after January 1, 1999.

(3) From U.S. Route 202 to Sacarappa Falls - Class B.

(4) From Sacarappa Falls to tidewater - Class C.

B. Presumpscot River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the outlet of Sebago Lake - Class B.

(2) Crooked River and its tributaries, except as otherwise provided, excluding existing impoundments and excluding that area of the river previously impounded at Scribners Mill - Class AA.

(3) Stevens Brook (Bridgton) - Class B.

(4) Mile Brook (Casco) - Class B.

#### **10. Narraguagus River Basin.**

#### **11. Royal River Basin.**

A. Royal River, main stem.

(1) From the outlet of Sabbathday Pond to its confluence with Collyer Brook - Class A.

(2) From its confluence with Collyer Brook to tidewater - Class B.

B. Royal River, Tributaries - Class B.

#### **12. Saco River Basin.**

A. Saco River, main stem.

(1) From the Maine-New Hampshire boundary to its confluence with the impoundment of the Swan's Falls Dam - Class A.

(2) From its confluence with the impoundment of the Swan's Falls Dam to a point located 1,000 feet below the Swan's Falls Dam - Class A.

(3) From a point located 1,000 feet below the Swan's Falls Dam to its confluence with the impoundment of the Hiram Dam - Class AA.

(4) From its confluence with the impoundment of the Hiram Dam to a point located 1,000 feet below the Hiram Dam - Class A.

(5) From a point located 1,000 feet below the Hiram Dam to its confluence with the Little Ossipee River - Class AA.

(6) From its confluence with the Little Ossipee River to the West Buxton Dam,

including all impoundments - Class A.

(7) From the West Buxton Dam to its confluence with the impoundment formed by the Bar Mills Dam - Class A.

(8) From its confluence with the impoundment formed by the Bar Mills Dam to the confluence with the impoundment formed by the Skelton Dam - Class A.

(9) From Skelton Dam to its confluence with the impoundment formed by the Cataract Project Dams - Class A.

(10) From the confluence with the impoundment formed by the Cataract Project Dams to its confluence with Swan Pond Stream, including all impoundments - Class A.

(11) From its confluence with Swan Pond Stream to tidewater - Class B.

B. Saco River, tributaries, those waters lying within the State - Class B unless otherwise specified.

(1) All tributaries entering above the confluence of the Ossipee River lying within the State and not otherwise classified - Class A.

(2) Wards Brook (Fryeburg) - Class C.

(3) Buff Brook (Waterboro) - Class A.

**13. St. Croix River Basin. A. St. Croix River, main stem.**

(1) Except as otherwise provided, from the outlet of Chiputneticook Lakes to its confluence with the Woodland Lake impoundment, those waters lying within the State - Class A.

(2) Those waters of the Grand Falls Flowage between Route 1 (Princeton and Indian Township) and Black Cat Island - Class B.

(3) Woodland Lake impoundment - Class C.

(4) From the Woodland Dam to tidewater, those waters lying within the State, including all impoundments - Class C.

B. St. Croix River, tributaries, those waters lying within the State - Class B unless otherwise specified.

(1) All tributaries entering upstream from the dam at Calais, the drainage areas of which are wholly within the State - Class A unless otherwise classified.

(2) Tomah Stream - Class AA.

**14. St. George River Basin. A. St. George River, main stem.**

(1) From the outlet of Little Pond to a point located 2,000 feet below the pond - Class A.

(2) From a point located 2,000 feet below the outlet of Little Pond to the confluence with Stevens Pond, from the outlet of Stevens Pond to the confluence with Trues Pond and from the outlet of Trues Pond to the confluence with Sennebec Pond - Class AA.

(3) From the outlet of Sennebec Pond to Route 90, excluding segments that are great ponds - Class A.

(4) From Route 90 to tidewater - Class B.

B. St. George River, tributaries - Class A unless otherwise specified.

(1) Quiggle Brook (Warren, Union, Hope) - Class B.

(2) All tributaries entering downstream of Route 90 in Warren - Class B.

**15. St. John River Basin. A. St. John River, main stem.**

(1) From the confluence of the Northwest Branch and the Southwest Branch to a point located one mile above the foot of Big Rapids in Allagash - Class AA.

(2) From a point located one mile above the foot of Big Rapids in Allagash to the international bridge in Fort Kent, those waters lying within the State, including all impoundments - Class A.

(3) From the international bridge in Fort Kent to the international bridge in Madawaska, those waters lying within the State, including all impoundments - Class B.

(4) From the international bridge in Madawaska to where the international boundary leaves the river in Hamlin, those waters lying within the State, including all impoundments - Class C.

**B. Allagash River Drainage.**

(1) Allagash River, main stem.

(a) From Churchill Dam to a point located 1,000 feet downstream from Churchill Dam - Class A.

(b) From a point located 1,000 feet downstream from Churchill Dam to its confluence with Gerald Brook in Allagash - Class AA.

(c) From its confluence with Gerald Brook in Allagash to its confluence with the St. John River - Class A.

(2) Allagash River, tributaries - Class A unless otherwise specified.

(a) Allagash Stream, from the outlet of Allagash Lake to its confluence with Chamberlain Lake - Class AA.

(b) Chemquasabamticook Stream, from the outlet of Chemquasabamticook Lake to its confluence with Long Lake - Class AA.

(c) Musquacook Stream, from the outlet of Third Musquacook Lake to its confluence with the Allagash River - Class AA.

**C. Aroostook River Drainage.**

(1) Aroostook River, main stem.

(a) From the confluence of Millinocket Stream and Munsungan Stream to the Route 11 bridge - Class AA.

(b) From the Route 11 bridge to the Sheridan Dam - Class B.

(c) From the Sheridan Dam to its confluence with Presque Isle Stream, including all impoundments - Class B.

(d) From its confluence with Presque Isle Stream to a point located 3.0 miles upstream of the intake of the Caribou water supply, including all impoundments - Class C.

(e) From a point located 3.0 miles upstream of the intake of the Caribou water supply to a point located 100 yards downstream of the intake of the Caribou water supply, including all impoundments - Class B.

(f) From a point located 100 yards downstream of the intake of the

Caribou water supply to the international boundary, including all impoundments - Class C.

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Route 161 bridge in Stockholm - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Aroostook River - Class AA.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.

(f) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.

(g) Presque Isle Stream and its tributaries above its confluence with, but not including, the North Branch of the Presque Isle Stream - Class A.

(h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.

(j) Squa Pan Stream from the outlet of Squa Pan Lake to its confluence with the Aroostook River - Class C.

(k) Limestone Stream from the Long Road bridge to the Canadian border - Class C.

**D. Fish River Drainage.**

(1) Fish River, main stem.

(a) From the outlet of Mud Pond to its confluence with St. Froid Lake - Class AA.

(b) From the outlet of St. Froid Lake to its confluence with Eagle Lake - Class A.

(c) From the outlet of Eagle Lake to its confluence with Perley Brook - Class A.

(d) From its confluence with Perley Brook to the St. John River - Class B.

(2) Fish River, tributaries - Class B unless otherwise specified.

(a) All tributaries entering above the Route 11 bridge - Class A.

**E. Meduxnekeag River Drainage.**

(1) Meduxnekeag River, main stem.

(a) From the outlet of Meduxnekeag Lake to the international boundary - Class B.

(2) Meduxnekeag River, tributaries - Class B unless otherwise specified.

(a) North Branch of the Meduxnekeag River and its tributaries above the

Monticello - T.C, R.2, W.E.L.S. boundary - Class A.

F. St. John River, minor tributaries, those waters lying within the State - Class A unless otherwise specified.

- (1) Except as otherwise classified, all minor tributaries of the St. John River entering below the international bridge in Fort Kent, those waters lying within the State - Class B.
- (2) Baker Branch, from a point located 1.5 miles below Baker Lake to its confluence with the Southwest Branch - Class AA.
- (3) Big Black River, from the international boundary to its confluence with the St. John River - Class AA.
- (4) Northwest Branch, from the outlet of Beaver Pond in T.12, R.17, W.E.L.S. to its confluence with the St. John River - Class AA.
- (5) Prestile Stream from its source to Route 1A in Mars Hill - Class A.
- (6) Southwest Branch, from a point located 5 miles downstream of the international boundary to its confluence with the Baker Branch - Class AA.

**16. Salmon Falls River Basin.**

A. Salmon Falls River, main stem.

- (1) From the outlet of Great East Lake to the Route 9 bridge - Class B.
- (2) From the Route 9 bridge to tidewater - Class C.

B. Salmon Falls River, tributaries, those waters lying within the State - Class B unless otherwise specified.

- (1) Chicks Brook (South Berwick, York) - Class A.

**17. Sheepscot River Basin.** A. Sheepscot River, main stem.

- (1) From its origin in Montville to Route 17 - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.
- (2) From Route 17 to tidewater - Class AA.

B. Sheepscot River, tributaries - Class B unless otherwise specified.

- (1) West Branch of the Sheepscot River, main stem, from the outlet of Branch Pond to its confluence with the Sheepscot River - Class AA.

**18. Union River Basin.** A. Union River, main stem.

- (1) From the outlet of Graham Lake to tidewater - Class B.

B. Union River, tributaries - Class A unless otherwise specified.

- (1) Tributaries entering below the outlet of Graham Lake - Class B.
- (2) Outlet of Green Lake (Ellsworth) - Class B.



**38 § 468. Classifications of minor drainages**

All surface waters lying within the boundaries of the State that are in basins having a drainage area less than 100 square miles that are not classified as lakes or ponds are classified in this section.

**1. Cumberland County.** Those waters draining directly or indirectly into tidal waters of Cumberland County, with the exception of the Androscoggin River Basin, the Presumpscot River Basin, the Royal River Basin and tributaries of the Androscoggin River Estuary and Merrymeeting Bay, entering above the Chops - Class B unless otherwise specified.

**A. Freeport.**

- (1) Frost Gully Brook - Class A.

**B. Portland.**

- (1) All minor drainages unless otherwise specified - Class C.
- (2) Stroudwater River from its origin to tidewater - Class B.

**C. Scarborough.**

- (1) All minor drainages - Class C unless otherwise specified.
- (2) Finnard Brook - Class B.
- (3) Stuart Brook - Class B.

**D. South Portland.**

- (1) All minor drainages - Class C.

**E.**

**F.**

**G.**

**H.**

**I.**

**2. Hancock County.** Those waters draining directly or indirectly into tidal waters of Hancock County, with the exception of the Union River Basin - Class B unless otherwise specified.

**A. All brooks, streams and segments of those brooks and streams that are within the boundaries of Acadia National Park - Class AA.**

**B. Blue Hill.**

- (1) Carleton Stream, main stem, between First Pond and Second Pond - Class C.
- (2) Carleton Stream, main stem, from the outlet of First Pond to tidewater at Salt Pond - Class C.

**C. Orland.**

- (1) Alamoosook Lake, tributaries - Class A.

**D.**

**E.**

**F.**

- G.
- H.
- I.
- J.
- K.
- L.
- M.

**3. Knox County.** Those waters draining directly or indirectly into tidal waters of Knox County, with the exception of the St. George River Basin - Class B unless otherwise specified.

- A.
- B.
- C.
- D.
- E.
- F.
- G.
- H.

**4. Lincoln County.** Those waters draining directly or indirectly into tidal waters of Lincoln County entering above the Chops, with the exception of the Sheepscot River Basin and tributaries of the Kennebec River Estuary and Merrymeeting Bay - Class B unless otherwise specified.

- A.
- B.
- C.

**5. Penobscot County.** Those waters draining directly or indirectly into tidal waters of Penobscot County, with the exception of tributaries of the Penobscot River Estuary entering north of a line extended in an east-west direction from the outlet of Reeds Brook in the village of Hampden Highlands - Class B unless otherwise specified.

- A.
- B.
- C. Winterport.

(1) Cove Brook, those waters above head of tide - Class AA.

**6. Sagadahoc County.** Those waters draining directly or indirectly into tidal waters of Sagadahoc County entering above the Chops, with the exception of tributaries of the Androscoggin River Estuary, the Kennebec River Estuary and Merrymeeting Bay - Class B unless otherwise specified.

- A.

**7. Waldo County.** Those waters draining directly or indirectly into tidal waters of Waldo County - Class B unless otherwise specified.

A. Ducktrap River from the outlet of Tilden Pond to tidewater - Class AA.

B.

C.

**8. Washington County.** Those waters draining directly or indirectly into tidal waters of Washington County, including impoundments of the Pennamaquan River, with the exception of the Dennys River Basin, the East Machias River Basin, the Machias River Basin, the Narraguagus River Basin and the Pleasant River Basin - Class B unless otherwise specified.

A. Jonesboro.

(1) Chandler River and its tributaries above the highway bridge on Route 1 - Class A.

B. Whiting.

(1) Orange River and its tributaries above the highway bridge on Route 1 - Class A.

C.

D.

E.

F.

G.

H.

I.

J. Edmunds.

(1) Hobart Stream - Class AA.

**9. York County.** Those waters draining directly or indirectly into tidal waters of York County, with the exception of the Saco River Basin, the Salmon Falls River Basin and the Mousam River Basin - Class B unless otherwise specified.

A. Kennebunk.

(1) Branch Brook - Class A.

B. Sanford.

(1) Branch Brook - Class A.

(2) Merriland River - Class A.

C. Wells.

(1) Branch Brook - Class A.

(2) Merriland River - Class A.

D.

**38 § 469. Classifications of estuarine and marine waters**

All estuarine and marine waters lying within the boundaries of the State and which are not otherwise classified are Class SB waters.

**1. Cumberland County.**

**A. Cape Elizabeth.**

(1) Tidal waters of the Spurwink River system lying north of a line at latitude 43°-33'-44" N. - Class SA.

**B. Cumberland.**

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43° 41'-18"N., longitude 70° - 05'-48"W. and running northeasterly to a point located on the Cumberland-Harpswell boundary at approximately latitude 43° - 42'-57"N., longitude 70° - 03'-50" W.; thence running southwesterly along the Cumberland-Harpswell boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running northeasterly along the Cumberland-Portland boundary to point of beginning - Class SA.

**C. Falmouth.**

(1) Tidal waters of the Town of Falmouth located westerly and northerly, to include the Presumpscot estuary, of a line running from the southernmost point of Mackworth Island; thence running northerly along the western shore of Mackworth Island and the Mackworth Island Causeway to a point located where the causeway joins Mackworth Point - Class SC.

**D. Harpswell.**

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Harpswell boundary at approximately latitude 43° - 42'-57" N., longitude 70° - 03'-50" W. and running northeasterly to a point located at latitude 43° - 43'-08" N., longitude 70° - 03'-36"W.; thence running southeasterly to a point located at latitude 43° - 42'-02" N., longitude 70° - 00'-00" W.; thence running due south to the Harpswell-Portland boundary; thence running northwesterly along the Harpswell-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running northwesterly along the Cumberland-Harpswell boundary to point of beginning - Class SA.

**E. Portland.**

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43° - 41'-18" N., longitude 70° - 05'-48" W. and running southeasterly along the Cumberland-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running southeasterly along the Harpswell-Portland boundary to longitude 70° - 00'-00" W.; thence running due south to a point located at latitude 43° - 38'-21" N., longitude 70° - 00'-00" W.; thence running due west to a point located at latitude 43° - 38'-21" N., longitude 70° - 09'-06" W.; thence running northeasterly to point of beginning - Class SA.

(2) Tidal waters of the City of Portland lying northwesterly of a line beginning at Spring Point Light in South Portland to the easternmost point of Fort Gorges Island, thence running northerly to the southernmost point of Mackworth Island - Class SC.

**E-1. Scarborough.**

(1) Tidal waters of the Scarborough River system lying north of a line running easterly from a point where the old Boston and Maine Railroad line intersects the marsh at latitude 43°-33'-06" N., longitude 70°-20'-58" W. to a point of land north of Black Rock at latitude 43°-33'-06" N., longitude 70°-19'-25" W., excluding those tidal waters of Phillips Brook lying upstream of a point 500

feet south of U.S. Route 1 - Class SA.

(2) Tidal waters of the Spurwink River system lying north of a line extending from Higgins Beach at latitude 43°-33'-44" N. to the town line - Class SA.

F. South Portland.

(1) Tidal waters of the City of South Portland lying westerly of a line beginning at Spring Point Light to the easternmost point of Fort Gorges Island in Portland - Class SC.

G.

**2. Hancock County.**

A. Bar Harbor.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 16'-36" N., southerly of latitude 44° - 20'-27" N., and westerly of longitude 68° - 09'-28" W. - Class SA.

B. Bucksport.

(1) All tidal waters - Class SC.

C. Cranberry Isles.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying within 0.5 mile of the shore of Baker Island - Class SA.

D. Mount Desert.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 16'-36" N. and easterly of longitude 68° - 13'-08" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W., except those waters of Broad Cove lying west of a line running from the point of land immediately south of the cove northerly to Navigation Can #7 and those waters lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA.

(3) (TEXT EFFECTIVE ON CONTINGENCY: See PL 1999, c. 277, §31)  
Tidal waters of Somes Sound lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA.

E. Orland.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

F. Southwest Harbor.

(1) Tidal waters lying northerly of latitude 44° - 12'-44" -" N., southerly of latitude 44° - 14'-13" N. and westerly of longitude 68° - 18'-27" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W. - Class SA.

G. Tremont.

(1) Tidal waters lying northerly of latitude 44° - 12'-44" N., southerly of latitude 44° - 14'-13" N. and easterly of longitude 68° - 20'-30" W. - Class SA.

H. Verona.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

I. Winter Harbor.

(1) Tidal waters lying south of a line running west from the northernmost tip of Frazer Point to longitude 68° -05'-00" W. and east of longitude 68° -05'-00" W. - Class SA.

**3. Knox County.**

A. Isle Au Haut.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 00'-00" N., southerly of latitude 44° - 03'-06" N., easterly of longitude 68° - 41'-00" W. and westerly of longitude 68° - 35'-00" W. - Class SA.

B. Owls Head.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC.

C. Rockland.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC.

**3-A. Lincoln County. A. Boothbay.**

(1) Tidal waters lying south of the northernmost point of Damariscove Island and west of longitude 69° -36'-00" W. - Class SA.

**4. Penobscot County.**

A. Hampden.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC.

B. Orrington.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC.

**5. Sagadahoc County.**

A. Georgetown.

(1) Tidal waters located within a line beginning at a point on the shore located at latitude 43° - 47'-16" N., longitude 69° -43'-09" W. and running due east to longitude 69° -42'-00" W.; thence running due south to latitude 43° - 42'-52" N.; thence running due west to longitude 69° -44' -25" W.; thence running due north to a point on the shore located at latitude 43° - 46'-15" N., longitude 69° -44'-25" W.; thence running northerly along the shore to point of beginning - Class SA.

B. Phippsburg.

(1) Tidal waters east of longitude 69°-50'-05" W. and west of longitude 69°-47'-00" W. - Class SA.

**6. Waldo County.**

A. Frankfort.

(1) All tidal waters - Class SC.

B. Prospect.

(1) All tidal waters - Class SC.

C. Searsport.

(1) Tidal waters located within a line beginning at the southernmost point of land on Kidder Point and running southerly along the western shore of Sears Island to the southernmost point of Sears Island; thence running due south to latitude 44°-25'-25" N.; thence running due west to latitude 44°-25'-25" N., longitude 68°-54'-30" W.; thence running due north to the shore of Mack Point at longitude 68°-54'-30" W.; thence running along the shore in an easterly direction to point of beginning - Class SC.

D. Stockton Springs.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

E. Winterport.

(1) All tidal waters - Class SC.

**7. Washington County.** A. Beals.

(1) Tidal waters lying east of the line extending from the westernmost point of Three Falls Point to the easternmost point of Crumple Island; thence south along longitude 67°-36'-47" W. - Class SA.

(2) Tidal waters lying south of a line extending from the easternmost point of the southern shore of the Mud Hole; thence extending along latitude 44°-29'-00" N. to the town line - Class SA.

B. Calais.

(1) Tidal waters of the St. Croix River and its tidal tributaries lying westerly of longitude 67°-14'-28" W. - Class SC.

C. Cutler.

(1) All tidal waters except those waters in Machias Bay and Little Machias Bay north of a line running from the town line due east to the southernmost point of Cross Island; thence running northeast to the southeasternmost point of Cape Wash Island; thence running northeast to the westernmost point of Deer Island; thence running due north to the mainland; and those waters lying northwest of a line running from the easternmost point of Western Head to the easternmost point of Eastern Knubble - Class SA.

D. Eastport.

(1) Tidal waters lying southerly of latitude 44°-54'-50" N., easterly of longitude 67°-02'-00" W. and northerly of latitude 44°-53'-15" N. - Class SC.

E. Edmunds.

(1) All tidal waters - Class SA.

F. Lubec.

(1) Tidal waters, except those lying within 500 feet of West Quoddy Head Light, south of a line beginning at a point located on the northern shore of West Quoddy Head at latitude 44°-49'-22" N., longitude 66°-59'-17" W. and running northeast to the international boundary at latitude 44°-49'-45" N., longitude 66°-57'-57" W. - Class SA.

(2) Tidal waters west of a line running from the easternmost point of Youngs Point to the easternmost point of Leighton Neck in Pembroke - Class SA.

G. Milbridge.

(1) Tidal waters south of a line running from the Steuben - Milbridge town line along latitude 44°-27'-39" N. to the northernmost point of Currant Island; thence running easterly to a point 1,000 feet from mean high tide on the northernmost point of Pond Island; thence along a line running 1,000 feet from mean high tide along the east side of Pond Island to the southernmost point of the island; thence running due south - Class SA.

H. Pembroke.

(1) Tidal waters west of a line running from the easternmost point of Leighton Neck to the easternmost point of Youngs Point in Lubec - Class SA.

I. Steuben.

(1) Tidal waters southeast of a line beginning at Yellow Birch Head at latitude 44°-25'-05" N.; thence running to longitude 67°-55'-00" W.; thence running due south along longitude 67°-55'-00" W. - Class SA.

(2) Tidal waters southwest of a line beginning at a point located south of Carrying Place Cove at latitude 44°-26'-18" N., longitude 67°-53'-14" W.; thence running along latitude 44°-26'-18" N. east to the town line - Class SA.

J. Trescott.

(1) All tidal waters - Class SA.

K. Whiting.

(1) Tidal waters of the Orange River - Class SA.

8. York County. A. Biddeford.

(1) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70°-22'-54" W. - Class SC.

B. Kennebunk.

(1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. - Class SA.

C. Kittery.

(1) Tidal waters of the Piscataqua River and its tidal tributaries lying westerly of longitude 70°-42'-52" W., southerly of Route 103 and easterly of Interstate Route 95 - Class SC.

(2) Tidal waters lying northeast of a line from Sisters Point; thence south along longitude 70°-40'-00" W. to the Maine-New Hampshire border; thence running southeast along the Maine-New Hampshire border to Cedar Ledge beyond the Isles of Shoals, except waters within 500 feet of the Isles of



Shoals Research Station - Class SA.

D. Old Orchard Beach.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70°-23'-08" W. - Class SC.

E. Saco.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70°-23'-08" W. - Class SC.

(2) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70°-22'-54" W. - Class SC.

F. Wells.

(1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. - Class SA.

G. York.

(1) Tidal waters lying southwest of a line from Seal Head Point east along latitude 43°-07'-15" N. - Class SA.

### **38 § 636. Approval criteria**

The department shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met.

**1. Financial capability.** The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the department may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

**2. Safety.** The applicant has made adequate provisions for protection of public safety.

**3. Public benefits.** The project will result in significant economic benefits to the public, including, but not limited to, creation of employment opportunities for workers of the State.

**4. Traffic movement.** The applicant has made adequate provisions for traffic movement of all types out of or into the development area.

**5. Maine Land Use Regulation Commission.** Within the jurisdiction of the Maine Land Use Regulation Commission, the project is consistent with zoning adopted by the commission.

**6. Environmental mitigation.** The applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts.

**7. Environmental and energy considerations.** The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

A. Whether the project will result in significant benefit or harm to soil stability, coastal and inland wetlands or the natural environment of any surface waters and their shorelands;

B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the department shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Atlantic Salmon Authority;

C. Whether the project will result in significant benefit or harm to historic and archeological resources;

D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses;

E. Whether the project will result in significant flood control benefits or flood hazards; and

F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace.

G.

The department shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

**8. Water quality.** There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph

F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

A. Notwithstanding section 464, subsection 2, the department shall reclassify the waters of the proposed impoundment to Class GPA if the department finds:

- (1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;
- (2) The proposed impoundment will exceed 30 acres in surface area;
- (3) The proposed impoundment will not have any upstream direct discharges except cooling water; and
- (4) The proposed impoundment will not violate section 464, subsection 4, paragraph F.